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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DEXTER LAWRENCE GRIFFIN,

Petitioner,

v.

BRANDON PRICE, Warden,

Respondent.

Case No. 1:21-cv-01516-ADA-CDB

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS TO DISMISS
UNEXHAUSTED PETITION WITHOUT
PREJUDICE

(ECF No. 14)

Petitioner Dexter Lawrence Griffin (“Petitioner”) is a state prisoner proceeding *pro se* with a petition for habeas corpus pursuant to 28 U.S.C. § 2254. (ECF No. 1). On October 25, 2021, the assigned Magistrate Judge issued an order to show cause why the petition should not be dismissed for failure to exhaust state remedies. (ECF No. 10). On November 18, 2021, Petitioner filed a response to the order to show cause, however, failed to indicate that he had presented his claim for federal relief to the highest relevant state court. (ECF No. 12). This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On December 7, 2021, the assigned Magistrate Judge entered findings and recommendations to dismiss the unexhausted petition without prejudice. (ECF No. 14). The assigned Magistrate Judge held that Petitioner failed to indicate in his petition that he had presented his claim for federal relief to the highest relevant state court. (*Id.* at 3.) In addition, the assigned

1 Magistrate Judge directed the Clerk of Court to assign a district judge to the case. (*Id.*) Those
2 findings and recommendations were served on Petitioner by mail and contained notice that any
3 objections were to be filed within twenty-one (21) days after service. (*Id.*)

4 On December 20, 2021, Petitioner timely filed objections to the assigned Magistrate Judge’s
5 findings and recommendations. (ECF No. 15). On January 4, 2022, Petitioner filed additional
6 objections, a motion to amend standing order of ongoing judicial emergency in Eastern District of
7 California, and requested the appointment of a guardian ad litem, class certification and
8 decertification pursuant to Federal Rule of Civil Procedure 23, motion to approve “minors
9 compromises” and a stay of the case to exhaust state remedies.¹ (ECF No. 16). From January 31,
10 2022, through February 7, 2022, Petitioner filed additional objections and motions to compel
11 discovery and requests for sanctions and subpoenas.² (ECF Nos. 20, 22-23). On February 28,
12 2022, Petitioner again filed objections to the assigned Magistrate Judge’s findings and
13 recommendations. (ECF No 24).

14 In his objections, which are difficult to decipher, Petitioner, at times, claims that he has
15 exhausted state judicial remedies. (ECF No. 15 at 11); (ECF No. 24 at 8). At other times, Petitioner
16 notes his habeas petition is not fully exhausted. (ECF No. 15 at 16); *see also* (ECF No. 16 at 2)
17 (Petitioner requests a dismissal and/or stay of the “federal proceedings to allow for exhaustion”).

18 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this
19 Court has conducted a *de novo* review of this case. Having carefully reviewed the entire file,
20 including Petitioner’s objections, this Court concludes that the findings and recommendations are
21 supported by the record and by proper analysis. Petitioner fails to persuade this Court that he has
22 sought relief in the highest relevant state court. Indeed, Petitioner admits his habeas petition was
23 not fully exhausted. The Court cannot consider a petition that is unexhausted. *Rose v. Lundy*, 455
24 U.S. 509, 521-22 (1982).

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28 ¹ On January 14, 2022, the assigned Magistrate Judge denied Petitioner’s motion and requests for relief. (ECF No. 19).

² On June 29, 2022, the assigned judge denied Petitioner’s motions. (ECF No. 25).

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Accordingly,

1. The findings and recommendations entered on December 7, 2021 (ECF No. 14) are adopted in full;
2. The petition for writ of habeas corpus (ECF No. 1) is **SUMMARILY DISMISSED** without prejudice for lack of jurisdiction; and
3. The Clerk of Court is directed to close this case.

IT IS SO ORDERED.

Dated: February 14, 2023


UNITED STATES DISTRICT JUDGE