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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

HARRY LLOYD HOWARD,

Petitioner,

No. CIV S-06-0398 FCD CMK P

vs.

TOM CAREY, Warden, et al.,

Respondents.

ORDER

_____ /

Petitioner, a state prisoner proceeding pro se, has filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner has paid the filing fee.

The exhaustion of available state remedies is a prerequisite to a federal court's consideration of claims sought to be presented in habeas corpus proceedings. See Rose v. Lundy, 455 U.S. 509 (1982); 28 U.S.C. § 2254(b). A petitioner can satisfy the exhaustion requirement by providing the highest state court with a full and fair opportunity to consider all claims before presenting them to the federal court. Picard v. Connor, 404 U.S. 270, 276 (1971), Middleton v. Cupp, 768 F.2d 1083, 1086 (9th Cir.), cert. denied, 478 U.S. 1021 (1986).

A review of the petition for habeas corpus reveals that petitioner has failed to exhaust his state court remedies; in the next box the question asking whether petitioner had filed anything other than a direct appeal in this matter, petitioner checked “no.”

1 The court finds that petitioner has failed to exhaust state court remedies. The
2 claims have not been presented to the California Supreme Court. Further, there is no allegation
3 that state court remedies are no longer available to him. Accordingly, IT IS HEREBY
4 RECOMMENDED that petitioner's application for a writ of habeas corpus be dismissed for
5 failure to exhaust state remedies.

6 These findings and recommendations will be submitted to the United States
7 District Judge assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within
8 twenty days after being served with these findings and recommendations, any party may file
9 written objections with the court and serve a copy on all parties. Such a document should be
10 captioned "Objections to Findings and Recommendations." Any reply to the objections shall be
11 served and filed within ten days after service of the objections. The parties are advised that
12 failure to file objections within the specified time may waive the right to appeal the District
13 Court's order. See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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15 DATED: March 7, 2006.

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18 **CRAIG M. KELLISON**
19 UNITED STATES MAGISTRATE JUDGE
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