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

CLARENCE B. HICKMAN,

Petitioner,

No. CIV S-06-1734 LKK GGH P

vs.

STATE OF CALIFORNIA,

Respondents.

ORDER AND

FINDINGS & RECOMMENDATIONS

_____/

Petitioner, a state prisoner proceeding pro se, has filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 together with a request to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. Petitioner has failed to provide a declaration with the signature of an authorized officer that makes the showing required by § 1915(a). However, the court will not require petitioner to file a corrected in forma pauperis request or the filing fee because the petition is plainly unexhausted.

The exhaustion of state court remedies is a prerequisite to the granting of a petition for writ of habeas corpus. 28 U.S.C. § 2254(b)(1). If exhaustion is to be waived, it must be waived explicitly by respondent’s counsel. 28 U.S.C. § 2254(b)(3).¹ A waiver of exhaustion,

¹ A petition may be denied on the merits without exhaustion of state court remedies. 28 U.S.C. § 2254(b)(2).

1 thus, may not be implied or inferred. A petitioner satisfies the exhaustion requirement by
2 providing the highest state court with a full and fair opportunity to consider all claims before
3 presenting them to the federal court. Picard v. Connor, 404 U.S. 270, 276 (1971); Middleton v.
4 Cupp, 768 F.2d 1083, 1086 (9th Cir.), cert. denied, 478 U.S. 1021 (1986).

5 After reviewing the petition for habeas corpus, the court finds that petitioner has
6 failed to exhaust state court remedies. Petitioner sets forth that he was convicted, on June 21,
7 2006, in Butte County Superior Court, pursuant to Cal. Penal Code §§ 1608, 1609, 1610.
8 Although petitioner offers no other clarification, under Cal. Penal Code § 1609, the state court
9 judge has evidently determined that petitioner is a danger to the health and safety of others and
10 has ordered his confinement in a state hospital or other treatment facility.

11 Petitioner states that his appeal to the Third District Court of Appeal is pending.
12 Plainly, the claims have not been presented to the California Supreme Court. Further, there is no
13 allegation that state court remedies are no longer available to petitioner. Accordingly, the
14 petition should be dismissed without prejudice.²

15 Good cause appearing, IT IS HEREBY ORDERED that the Clerk of the Court is
16 directed to serve a copy of these findings and recommendations together with a copy of the
17 petition filed in the instant case on the Attorney General of the State of California; and

18 IT IS HEREBY RECOMMENDED that petitioner's application for a writ of
19 habeas corpus be dismissed for failure to exhaust state remedies.

20 These findings and recommendations will be submitted to the United States
21 District Judge assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within
22 twenty days after being served with these findings and recommendations, petitioner may file

23
24 ² Petitioner is cautioned that the habeas corpus statute imposes a one year statute of
25 limitations for filing non-capital habeas corpus petitions in federal court. In most cases, the one
26 year period will start to run on the date on which the state court judgment became final by the
conclusion of direct review or the expiration of time for seeking direct review, although the
statute of limitations is tolled while a properly filed application for state post-conviction or other
collateral review is pending. 28 U.S.C. § 2244(d).

1 written objections with the court. The document should be captioned "Objections to Findings
2 and Recommendations." Petitioner is advised that failure to file objections within the specified
3 time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153
4 (9th Cir. 1991).

5 DATED: 8/17/06

/s/ Gregory G. Hollows

UNITED STATES MAGISTRATE JUDGE

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