

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF CALIFORNIA

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4
5 RICHARD HARMON JR.,
6 Petitioner,

No. CV-06-02572-FVS

7 v.

ORDER DENYING PETITION FOR
WRIT OF HABEAS CORPUS

8
9 MIKE KNOWLES,
10 Respondent.

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12 **THIS MATTER** comes before the Court on Petitioner's Petition for
13 Writ of Habeas Corpus (the "Petition"), pursuant to 28 U.S.C. § 2254.
14 (Ct. Rec. 1). Petitioner is proceeding pro se. Jesse N. DeWitt, a
15 Deputy Attorney General for the State of California, is representing
16 Respondent.

17 **BACKGROUND**

18 At the time this Petition was filed, Petitioner was in custody at
19 Kern Valley State Prison pursuant to his May 8, 2003 conviction in the
20 San Joaquin County Superior Court for second-degree murder, robbery
21 and arson. (Ct. Rec. 1). On August 22, 2003, Petitioner began
22 serving an aggregate prison term of 54 years, eight months to life.
23 (Ct. Rec. 1). Petitioner is challenging his conviction based on
24 alleged violations of his Fifth and Sixth Amendment rights. (Ct. Rec.
25 1).
26

1 **I. Factual History**

2 Petitioner was convicted for the murder of Adolfine Weiss. (Ct.
3 Rec. 6). Ms. Weiss's badly charred body was found inside the
4 abandoned building where she resided. (Id.) Petitioner, in the
5 course of robbing Ms. Weiss, set fire to both she and the house.
6 (Id.) The medical evidence introduced at trial showed that Ms. Weiss
7 died of ligature strangulation prior to the fire being started. (Id.)

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9 **II. Procedural History**

10 Petitioner was convicted on May 8, 2003,. (Ct. Rec. 6). He
11 appealed his conviction to the Third District Court of Appeal for the
12 State of California. (Ct. Rec. 1). His appeal raised five issues,
13 none of which are currently before this Court. (Ct. Rec. 7, Lodged
14 Doc. B). The Third District affirmed in part and remanded with
15 directions regarding the adjustment of fines. *People v. Harmon*, No.
16 C044925, 2005 WL 1111759, at *13 (May 11, 2005) (unreported decision).
17 On July 20, 2005, the California Supreme Court denied Petitioner's
18 request for review. (Ct. Rec. 7, Lodged Doc. D).

19 On August 26, 2005, Petitioner filed a petition for writ of
20 habeas corpus in San Joaquin County Superior Court. (Ct. Rec. 7,
21 Lodged Doc. F). This was the first time Petitioner raised the alleged
22 Fifth and Sixth Amendment violations. (Ct. Rec. 7, Lodged Doc. F).
23 On October 11, 2005, the Superior Court denied the petition, holding
24 that the Fifth and Sixth Amendment issues should have been raised on
25 direct appeal, and that Petitioner failed to allege his claims with
26 sufficient particularity. (Ct. Rec. 7, Lodged Doc. G). Petitioner

1 then filed a petition for writ of habeas corpus with the Third
2 District Court of Appeal. (Ct. Rec.7, Lodged Doc. H). On November 3,
3 2005, the Third District summarily denied the petition. (Ct. Rec. 7,
4 Lodged Doc. I). Petitioner then filed a petition for review with the
5 California Supreme Court. (Ct. Rec. 7, Lodged Doc. J). The
6 California Supreme Court, citing *In re Dixon*, 41 Cal.2d 756 (1953),
7 denied the petition. (Ct. Rec. 7, Lodged Doc. K).

8 Petitioner filed the instant petition for writ of habeas corpus
9 in the United States District Court for the Eastern District of
10 California on November 16, 2006. (Ct. Rec. 1).

11 **DISCUSSION**

12 Petitioner alleges that his Fifth and Sixth Amendment rights were
13 violated when statements he made to police after requesting counsel
14 were introduced against him at trial. (Ct. Rec. 1.) He also argues
15 that his Sixth Amendment right to an impartial jury was violated when
16 a woman with "negative opinions" about him was left on the jury over
17 his objection. (Ct. Rec. 1.) The State of California (the "State")
18 argues that under California law, these claims are procedurally barred
19 because Petitioner did not raise them on direct review. (Ct. Rec. 6
20 at 10, 13). According to the State, this procedural bar constitutes
21 an "independent and adequate" state law ground for denying federal
22 review. (*Id.*)

23 The principles of federalism and comity dictate that a federal
24 court will not review a question of federal law decided by a state
25 court if the decision of that court rests on "independent and
26 adequate" state law grounds. *Coleman v. Thompson*, 501 U.S. 722, 729

1 (1991). "Independent" means the decision is made independent of
2 federal law. *Id.* "Adequate" means that state law supports the
3 court's decision. See *id.* If the law relied on by the state court is
4 both independent of federal law and adequate to support its decision,
5 a federal court will deny review. *Id.*

6 Applicable to this case is the doctrine of "procedural default."
7 Procedural default occurs when a state court declines to address a
8 prisoner's federal claims because he has failed to meet a state
9 procedural requirement. *Id.* at 729-30. The United States Supreme
10 Court has held that procedural default constitutes a specific
11 application of the "independent and adequate state ground" doctrine,
12 and acts as a bar to federal review, absent a showing of cause and
13 prejudice. *Id.* at 730-31; see also *Estelle v. McGuire*, 502 U.S. 62,
14 67-68 (1991). "A state procedural rule constitutes an adequate bar to
15 federal court review if it was firmly established and regularly
16 followed at the time it was applied by the state court, and is
17 considered independent if it is not interwoven with federal law or
18 dependent upon a federal constitutional ruling." *Poland v. Stewart*,
19 169 F.3d 573, 577 (9th Cir. 1998) (citing *Ford v. Georgia*, 498 U.S.
20 411, 424 (1991); *Ake v. Oklahoma*, 470 U.S. 68, 75 (1985)) (internal
21 quotations omitted). Further, a federal court lacks jurisdiction to
22 review state court applications of state law procedural rules: the
23 federal court's only task is to determine whether the state court
24 decision rests on independent and adequate state law grounds. See
25 *Poland v. Stewart*, 151 F.3d 1014, 1018 (9th Cir. 1998) However, the
26 Supreme Court has created a "conclusive presumption of [federal]

1 jurisdiction" in habeas cases. *Id.* at 733. In order to overcome this
2 presumption, the state court must "clearly and expressly [state] that
3 [its decision] is . . . based on bona fide separate, adequate, and
4 independent grounds." *Id.* (direct review cases); see also *Harris v.*
5 *Reed*, 489 U.S. 255 (1989) (applying presumption of federal
6 jurisdiction to habeas cases). In order to determine whether a state
7 court has met this "clear statement" standard, a federal court looks
8 to the decision of the last state court to which the petitioner
9 presented his federal claims. *Coleman*, 501 U.S. at 735.

10 In this case, the California Supreme Court is the last state
11 court to which Petitioner presented his federal claims.
12 The court cited *In re Dixon* in its one sentence order denying relief.
13 (Ct. Rec. 7, Lodged Doc. K).¹ Under the California Supreme Court's
14 holding in *In re Dixon*, a federal claim that is not raised on direct
15 review cannot be raised for the first time in a state habeas
16 proceeding, unless there are extraordinary circumstances excusing the
17 failure to appeal. *In re Dixon*, 41 Cal.2d at 759. Petitioner alleges
18 before this Court that he raised the "*Miranda*" issue on direct review.
19 (Ct. Rec. 1). However, a review of the appellate record clearly
20 indicates that Petitioner did not raise either federal issue on direct
21 review. Petitioner concedes this point in his state habeas petitions.
22 These documents, drafted by Petitioner, clearly indicate that he did

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24 ¹ In *Coleman*, the United States Supreme Court denied federal
25 habeas relief to a state prisoner based on a three-sentence
26 dismissal order issued by the Virginia Supreme Court, finding
that it did not rely on federal law. Similarly, the California
Supreme Court in this case issued a one-sentence order, citing
one California case.

1 not raise these issues on direct review. (Ct. Rec. 7, Lodged Docs. F,
2 H). Further, the Third District Court of Appeal's decision affirming
3 his conviction does not mention any Fifth or Sixth Amendment issues
4 being before the court. *People v. Harmon*, No. C044925, 2005 WL
5 1111759, at * 13 (May 11, 2005) (unreported decision). The California
6 Supreme Court clearly applied its own procedural rule, firmly
7 established and regularly applied at the time of its application, to
8 deny habeas relief to Petitioner.

9 Petitioner alleged in his petitions for state habeas relief that
10 his failure to raise the federal claims on direct review was justified
11 because more evidence was required that was not contained in the
12 appellate record. (Ct. Rec. 7, Lodged Docs. F, H, & J). The Superior
13 Court disagreed, holding that these issues were ripe for appeal on
14 direct review. (Ct. Rec. 7, Lodged Doc. G at 1). Thus, Petitioner
15 did not make a showing of "extraordinary circumstances," the standard
16 required to justify a failure to appeal under *In re Dixon*.

17 The Court finds that the California courts relied exclusively on
18 a state procedural rule as the basis for denying habeas relief to
19 Petitioner. This Court has no jurisdiction to second guess whether
20 the California Supreme Court properly applied its own procedural rule
21 to the facts of Petitioner's case. *Poland*, 151 F.3d at 1018.
22 Further, Petitioner has not shown the "cause and prejudice" required
23 to avoid application of the "independent and adequate" state ground
24 doctrine. See *Coleman*, 501 U.S. at 730-31. This Court must deny
25 review.

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IT IS SO ORDERED. The Clerk is hereby directed to enter this order, furnish copies to counsel, enter judgment in favor of Respondent, and **CLOSE THE FILE.**

s/ Fred Van Sickle

Fred Van Sickle
Senior United States District Judge