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

TOMMY RAY BROWN,

Petitioner,

No. CIV S-07-1145 LKK GGH P

vs.

J. DOVEY, 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 together with a request to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. Petitioner has submitted a declaration that makes the showing required by § 1915(a). Accordingly, the request to proceed in forma pauperis will be granted. 28 U.S.C. § 1915(a).

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, thus, may not be implied or inferred. A petitioner satisfies the exhaustion requirement by

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

1 providing the highest state court with a full and fair opportunity to consider all claims before
2 presenting them to the federal court. Picard v. Connor, 404 U.S. 270, 276, 92 S. Ct. 509, 512
3 (1971); Middleton v. Cupp, 768 F.2d 1083, 1086 (9th Cir.), cert. denied, 478 U.S. 1021 (1986).

4 After reviewing the petition for habeas corpus, it does not appear that petitioner
5 has exhausted state court remedies. Accordingly, petitioner is ordered to show cause within ten
6 days of the date of this order why this action should not be dismissed for his failure to exhaust
7 state court remedies.

8 Good cause appearing, IT IS HEREBY ORDERED that:

- 9 1. Petitioner is granted leave to proceed in forma pauperis;
10 2. Within ten days of the date of this order, petitioner shall show cause why this
11 action should not be dismissed for his failure to exhaust state court remedies.

12 DATED: 7/2/07

/s/ Gregory G. Hollows

UNITED STATES MAGISTRATE JUDGE

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