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

JASON YONAI,

Petitioner,

No. CIV S-07-2197 GEB EFB P

vs.

WALKER, et al.,

Respondents.

FINDINGS AND RECOMMENDATIONS

_____/

Petitioner is a state prisoner proceeding without counsel on a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He challenges a loss of credits imposed at a prison disciplinary hearing based on a rules violation report dated June 3, 2003.¹ *See* Pet. at 5. Respondent moves to dismiss on the grounds that petitioner has failed to exhaust his state judicial remedies and that the petition is untimely. The court finds that the petition is unexhausted and must therefore be dismissed.

¹ In one section of the petition, petitioner states that he is challenging a February 4, 2004 conviction by the Solano County Superior Court. Pet., Dckt. No. 1, at 2. In another section, petitioner indicates that he is challenging a rules violation report disciplinary hearing and not a conviction. *Id.* at 6. It appears that petitioner intends to challenge the result of a prison disciplinary hearing, as the substance of his only ground for relief relates to the loss of credits imposed as a result of being found guilty of possession of a weapon, as documented in a June 3, 2003 rules violation report. *Id.* at 5.

1 A district court may not grant a petition for a writ of habeas corpus unless the petitioner
2 has exhausted available state court remedies. 28 U.S.C. § 2254(b)(1). A state will not be
3 deemed to have waived the exhaustion requirement unless the state, through counsel, expressly
4 waives the requirement. 28 U.S.C. § 2254(b)(3). Exhaustion of state remedies requires that
5 petitioners fairly present federal claims to the highest state court, either on direct appeal or
6 through state collateral proceedings, in order to give the highest state court “the opportunity to
7 pass upon and correct alleged violations of its prisoners’ federal rights.” *Duncan v. Henry*, 513
8 U.S. 364, 365 (1995) (some internal quotations omitted).

9 In his petition, petitioner lists three California Supreme Court cases, suggesting that he
10 somehow in those cases has exhausted the claims in issue here. Pet. at 4. Respondent includes
11 in his motion to dismiss the petitions filed in each of those cases. Resp.’s Mot. to Dism.
12 (“Mot.”), Exs. 1-3. The first petition, filed in case number S143120, was not filed by petitioner,
13 and therefore, could not have exhausted petitioner’s claim. *See id.*, Ex. 1. The second petition,
14 filed in case number S143170, was filed by petitioner, but challenges various criminal
15 proceedings in the Solano County Superior Court. *Id.*, Ex. 2. The third petition, filed in case
16 number S147610, appears to challenge the same superior court proceedings. *Id.*, Ex. 3. None of
17 these petitions included the claim now at issue. Thus, they do not demonstrate in any way that
18 petitioner has exhausted his state court remedies as to the claims asserted here.

19 In his opposition brief, petitioner states that he “think[s] [he] also exhausted [his] grounds
20 for relief to the highest level in Supreme Court Case No. S143704” Pet’r’s Opp’n to Mot.
21 (“Opp’n”) at 1. That petition was denied by order filed July 12, 2006. *In re Jason David Yonai*,
22 2006 Cal. LEXIS 8620. Although petitioner did not file a copy of the petition for review with
23 his opposition brief, he previously filed a copy of that petition in another action he filed in this
24 court.² That petition makes no reference to the disciplinary action petitioner now challenges. In

25
26 ² *See* Case No. CIV-S-06-2784 LKK KJM, Docket No. 1 at unnumbered page 8. *See also* Case No. CIV-S-06-1250 JKS CMK, Docket No. 6 at unnumbered pages 26-27. A court

1 order to properly exhaust his state court remedies, petitioner must file a habeas corpus petition in
2 the California Supreme Court challenging the prison disciplinary conviction on the ground raised
3 in the instant petition.

4 Accordingly, the court finds that petitioner has failed to exhaust state court remedies and
5 respondent's motion to dismiss must be granted on this ground. Because the claim is not
6 exhausted, the court need not reach the issue of whether the claim is barred by the statute of
7 limitations.³

8 Accordingly, IT IS HEREBY RECOMMENDED that:

9 1. Respondent's August 26, 2009, motion to dismiss be granted on ground that the claim
10 raised in this action is not exhausted; and

11 2. The Clerk be directed to close the case.


12 These findings and recommendations are submitted to the United States District Judge
13 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
14 after being served with these findings and recommendations, any party may file written
15 objections with the court and serve a copy on all parties. Such a document should be captioned
16 "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections
17 within the specified time may waive the right to appeal the District Court's order. *Turner v.*
18 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991). In
19 his objections, he may address whether a certificate of appealability should issue in the event he
20 files an appeal of the judgment in this case. *See* Rule 11, Federal Rules Governing Section 2254

21 _____
22 may take judicial notice of court records. *See MGIC Indem. Co. v. Weisman*, 803 F.2d 500, 505
(9th Cir. 1986); *United States v. Wilson*, 631 F.2d 118, 119 (9th Cir. 1980).

23 ³ Petitioner states that his mental health status made it hard for him to exhaust his state
24 remedies. Opp'n at 1, Ex. A. The court is not aware of any authority that would excuse
25 petitioner from the exhaustion requirement in the absence of an express waiver by respondent.
26 Further, there is no allegation that state court remedies are no longer available to petitioner.
While petitioner's mental health could be relevant to whether he would be entitled to equitable
tolling of the statute of limitations, the court need not address that issue since it declines to reach
the timeliness question.

1 Cases (the district court must issue or deny a certificate of appealability when it enters a final
2 order adverse to the applicant).

3 Dated: February 3, 2010.


4 EDMUND F. BRENNAN
5 UNITED STATES MAGISTRATE JUDGE
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