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

MICHAEL JONES,

Petitioner,

No. CIV-S-08-1933 JAM KJM P

vs.

WARDEN MARTEL,

Respondent.

FINDINGS AND RECOMMENDATIONS

_____ /

Petitioner is a California prisoner proceeding pro se with a petition for writ of habeas corpus under 28 U.S.C. § 2254. Petitioner challenges several convictions, including rape, entered in Yolo County in 2003. Respondent argues that this action should be dismissed for failure to exhaust state court remedies. Petitioner has opposed the motion. Respondent has not filed a reply.

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). A petitioner satisfies 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).

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1 Respondent asserts petitioner has not exhausted state court remedies with respect
2 to claim 1, that the prosecution failed to disclose evidence favorable to the defense; claim 5,
3 prosecutorial misconduct; and claim 6, ineffective assistance of counsel. However, a review of
4 the court's file reveals that claims 1, 5 and 6 were raised as claims 4, 5 and 6, respectively, in a
5 petition for writ of habeas corpus presented to the California Supreme Court. Pet. at 4, 8-11, 21-
6 24, 67-69, 105-115;¹ cf. Resp't's Lodged Doc. #5 at consecutive pages 131-189. The petition
7 was denied by the California Supreme Court on February 27, 2008. Id. at consecutive page 1.

8 For these reasons, respondent's motion to dismiss should be denied and
9 respondent should be ordered to file his answer.

10 Accordingly, IT IS HEREBY RECOMMENDED that:

- 11 1. Respondent's motion to dismiss (#12) be denied.
- 12 2. Respondent be granted no more the thirty days in which to file his answer.

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

21 DATED: December 7, 2009.

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25 U.S. MAGISTRATE JUDGE

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¹ Page references to the petition are those assigned by the court's CM/ECF system.