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

SHAKA SENEGAL MUHAMMAD,

Petitioner,

No. 2:09-cv-2503 LKK KJN P

vs.

WARDEN D.K. SISTO, et al.,

Respondents.

FINDINGS & RECOMMENDATIONS

Petitioner, a state prisoner proceeding without counsel and in forma pauperis, filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Respondents’ December 20, 2010 motion to dismiss for failure to state a federal claim and for failure to exhaust state court remedies is now before the court. Petitioner filed an opposition on February 24, 2011, and respondent filed a reply on March 9, 2011. For the reasons stated below, the court recommends that respondent’s motion to dismiss be granted and this action be dismissed based on petitioner’s failure to exhaust state court remedies.

I. Motion to Dismiss for Failure to Exhaust

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

1 be waived explicitly by respondent’s counsel. 28 U.S.C. § 2254(b)(3).<sup>1</sup> Thus, a waiver of  
2 exhaustion may not be implied or inferred. A petitioner satisfies the exhaustion requirement by  
3 providing the highest state court with a full and fair opportunity to consider all claims before  
4 presenting them to the federal court. Picard v. Connor, 404 U.S. 270, 276 (1971); Middleton v.  
5 Cupp, 768 F.2d 1083, 1086 (9th Cir.), cert. denied, 478 U.S. 1021 (1986).

6 The state court has had an opportunity to rule on the merits when the petitioner  
7 has fairly presented the claim to that court. The fair presentation requirement is met where the  
8 petitioner has described the operative facts and legal theory on which his claim is based. Picard,  
9 404 U.S. at 277-78. Generally, it is “not enough that all the facts necessary to support the federal  
10 claim were before the state courts . . . or that a somewhat similar state-law claim was made.”

11 Anderson v. Harless, 459 U.S. 4, 6 (1982). Instead,

12 [i]f state courts are to be given the opportunity to correct alleged  
13 violations of prisoners’ federal rights, they must surely be alerted  
14 to the fact that the prisoners are asserting claims under the United  
15 States Constitution. If a habeas petitioner wishes to claim that an  
evidentiary ruling at a state court trial denied him the due process  
of law guaranteed by the Fourteenth Amendment, he must say so,  
not only in federal court, but in state court.

16 Duncan v. Henry, 513 U.S. 364, 365 (1995). Accordingly, “a claim for relief in habeas corpus  
17 must include reference to a specific federal constitutional guarantee, as well as a statement of the  
18 facts which entitle the petitioner to relief.” Gray v. Netherland, 518 U.S. 152 (1996). The  
19 United States Supreme Court has held that a federal district court may not entertain a petition for  
20 habeas corpus unless the petitioner has exhausted state remedies with respect to each of the  
21 claims raised. Rose v. Lundy, 455 U.S. 509 (1982).

22 In the second amended petition, petitioner raises the following claims: (1) during  
23 two prison disciplinary hearings, held December 17, 2007, and December 21, 2007, petitioner  
24 was denied due process because of various alleged procedural problems, for example, petitioner

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

1 alleges he was not allowed to call witnesses or present documentary evidence, one hearing was  
2 allegedly untimely held, the decision-makers allegedly were unprofessional and not impartial,  
3 and one rules violation report was not signed by the reporting employee. (2) Petitioner also  
4 contends the evidence did not support the findings in either hearing.

5           In his opposition concerning exhaustion, petitioner argues that his June 15, 2009  
6 petition in the California Supreme Court exhausted the instant federal claims.

7           In the June 15, 2009 petition filed in the California Supreme Court, petitioner  
8 raised the following claims: (1) violation of the First Amendment and state and federal  
9 Constitutions based on a refusal to process two citizens complaints; (2) violation of petitioner’s  
10 First Amendment rights based on prison officials’ interference with petitioner’s outgoing legal  
11 mail; (3) violation of petitioner’s Eighth Amendment right based on the appeal coordinator’s  
12 alleged refusal to process petitioner’s Citizen’s complaints because it “created the condition for  
13 petitioner to be subjected to oppression and torture,” and petitioner’s “human rights [were]  
14 violated due to petitioner’s transfer from a Level II facility to a Level III facility due to an  
15 increase in points.”<sup>2</sup> (Dkt. No. 30-2 at 4-7.)

16           After reviewing the petition for habeas corpus, the court finds that petitioner has  
17 failed to exhaust state court remedies. Petitioner did not raise his due process challenges to the  
18 prison disciplinary hearings in the June 15, 2009 petition filed in the California Supreme Court.  
19 The June 15, 2009 petition did not in any way challenge the findings of the prison disciplinary  
20 hearings or the manner in which the hearings were held. Therefore, petitioner’s due process  
21 claims were not fairly presented to the California Supreme Court. Further, there is no allegation  
22 that state court remedies are no longer available to petitioner. Because none of the claims raised  
23 in the second amended petition are exhausted, respondents’ motion to dismiss should be granted,

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25           <sup>2</sup> The California Court of Appeal, First Appellate District, construed the petition as  
26 alleging two claims: (1) that the California Department of Corrections failed to process two of  
petitioner’s citizen complaints; and (2) that petitioner’s legal mail was illegally opened. (Dkt.  
No. 30-2 at 22.)

1 and the second amended petition should be dismissed without prejudice.<sup>3</sup>

2 II. Motion to Dismiss for Failure to State a Federal Claim


3 In light of the above recommendations, the court need not reach respondents'  
4 contention that petitioner has failed to state a federal claim.

5 IT IS HEREBY RECOMMENDED that:

- 6 1. Respondents' December 20, 2010 motion to dismiss (dkt. no. 30) be granted;  
7 and  
8 2. Petitioner's second amended petition for writ of habeas corpus be dismissed,  
9 without prejudice, for failure to exhaust state remedies.

10 These findings and recommendations will be submitted to the United States  
11 District Judge assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within  
12 twenty-one days after being served with these findings and recommendations, petitioner may file  
13 written objections with the court. The document should be captioned "Objections to Findings  
14 and Recommendations." Any response to the objections shall be filed and served within fourteen  
15 days after service of the objections. Petitioner is advised that failure to file objections within the  
16 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951  
17 F.2d 1153 (9th Cir. 1991).

18 DATED: May 20, 2011

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21 KENDALL J. NEWMAN  
22 UNITED STATES MAGISTRATE JUDGE

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24 <sup>3</sup> 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).