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

HECTOR ERNESTO URIARTE,

Petitioner,

No. CIV S-10-0147 KJM P

vs.

F. GONZALES,

Respondent.

ORDER AND

FINDINGS AND RECOMMENDATIONS

Petitioner, a state prisoner proceeding pro se, has filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner has paid the filing fee.

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). After reviewing petitioner’s petition for habeas corpus, the court finds that petitioner has failed to exhaust state court remedies because, based on his own report, his claims have not been presented to the California Supreme Court. Further, there is no allegation that state court remedies are no longer available to petitioner. Accordingly, the petition should be dismissed without prejudice.¹

¹ Petitioner is cautioned that the habeas corpus statute imposes a one year statute of limitations for filing non-capital habeas corpus petitions in federal court. In most cases, the one 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

1 Good cause appearing, IT IS HEREBY ORDERED that:

2 1. The Clerk of the Court is directed to assign a district court judge to this case;

3 and

4 2. The Clerk of the Court is directed to serve a copy of these findings and
5 recommendations together with a copy of the petition filed in the instant case on the Attorney
6 General of the State of California.

7 IT IS HEREBY RECOMMENDED that petitioner's application for a writ of
8 habeas corpus be dismissed for failure to exhaust state remedies.

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

16 DATED: January 27, 2010.

17 
18 U.S. MAGISTRATE JUDGE

19 l/md
20 uria0147.103(1.21.10)

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25 _____
26 is tolled while a properly filed application for state post-conviction or other collateral review is pending. 28 U.S.C. § 2244(d).