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

JOSE FEDERICO VASQUEZ,

Petitioner,

No. 2:10-cv-1189 KJN P

vs.

PEOPLE OF THE STATE OF
CALIFORNIA,

Respondent.

ORDER and
FINDINGS AND RECOMMENDATIONS

_____/

Petitioner, a state prisoner proceeding without counsel, has filed, inappropriately, an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner designates the petition as an “appeal” of his December 10, 2009 conviction and March 26, 2010 sentencing in the Sacramento County Superior Court. (See Dkt. No. 1, at 2.)

The exhaustion of state court remedies is a prerequisite to the granting of a federal 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, whether through direct appeal and/or habeas review, 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).

The failure of petitioner to exhaust state court remedies is patently apparent on the

1 face of the petition. Because none of petitioner's claims have been presented to the California
2 Supreme Court, the petition must be dismissed with prejudice.

3 Accordingly, IT IS HEREBY ORDERED that:

4 1. The Clerk of Court shall assign a district judge to this case.


5 Additionally, IT IS HEREBY RECOMMENDED that:

6 1. The instant petition for writ of habeas corpus (Dkt. No. 1) be dismissed with
7 prejudice; and

8 2. The Clerk of Court be directed to close this case.

9 These findings and recommendations are submitted to the United States District
10 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 21 days
11 after being served with these findings and recommendations, plaintiff may file written objections
12 with the court. The document should be captioned "Objections to Magistrate Judge's Findings
13 and Recommendations." Plaintiff 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: May 21, 2010

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21 KENDALL J. NEWMAN
22 UNITED STATES MAGISTRATE JUDGE

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