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1 2 3 4 5 6 7 8 IN THE UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF CALIFORNIA RONALD LLOYD GILBERT, 10 11 Petitioner, No. CIV S-10-2187 GGH P 12 VS. THE PEOPLE OF SACRAMENTO COURT, 13 Respondent. ORDER 14 15 Petitioner, a state prisoner proceeding pro se, has filed an application for a writ of 16 17 habeas corpus pursuant to 28 U.S.C. § 2254, together with a request to proceed in forma pauperis. 18 19 Examination of the affidavit reveals petitioner is unable to afford the costs of this action. Accordingly, leave to proceed in forma pauperis is granted. 28 U.S.C. § 1915(a). 20 21 The exhaustion of available state remedies is a prerequisite to a federal court's 22 consideration of claims sought to be presented in habeas corpus proceedings. See Rose v. Lundy, 23 455 U.S. 509 (1982); 28 U.S.C. § 2254(b). A petitioner can satisfy the exhaustion requirement by providing the highest state court with a full and fair opportunity to consider all claims before 2.4

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).

Petitioner alleges that at sentencing for a 2008 conviction, the trial court improperly added a sentencing enhancement due to a 1989 conviction. However, after reviewing the instant petition for habeas corpus, it does not appear that petitioner has exhausted his claims in state court relating to the 2008 conviction. On the habeas application form, petitioner has indicated that there were no direct appeals in state courts and no state habeas petitions.

Within twenty-one days petitioner shall show cause why this petition should not be dismissed for failure to exhaust state remedies.

## Accordingly, IT IS HEREBY ORDERED that:

- 1. Petitioner is granted leave to proceed in forma pauperis; and
- 2. That within twenty-one days of the date of this order, plaintiff shall show cause why this action should not be dismissed for failure to exhaust state remedies.

DATED: September 13, 2010

/s/ Gregory G. Hollows

UNITED STATES MAGISTRATE JUDGE

GGH: AB gilb2187.osc