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

ANTHONY B. TILLMAN,

Petitioner,

No. 2:11-cv-0816 KJN P

vs.

BOARD OF PRISON TERMS,

Respondent.

ORDER

_____ /

Petitioner is a state prisoner proceeding without counsel with an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. By order filed April 5, 2011, the petition was dismissed and petitioner was granted thirty days to file an amended petition. Petitioner was informed that he must name as respondent the warden of the prison where he is incarcerated, and clarify whether he challenged his 1987 conviction, or whether he challenged a denial of parole.

Petitioner filed an amended petition on April 11, 2011. Petitioner has again named the Board of Prison Terms as a respondent, rather than Rick Hill, Warden of Folsom State Prison. Petitioner clarified that he challenges a denial of parole, but failed to expressly state which parole decision he is challenging, i.e. what year the parole decision was rendered. Finally, petitioner has failed to confirm that he has exhausted state court remedies in connection with his claim that a particular denial of parole violated his constitutional rights.

1 The exhaustion of state court remedies is a prerequisite to the granting of a
2 petition for writ of habeas corpus. 28 U.S.C. § 2254(b)(1). If exhaustion is to be waived, it must
3 be waived explicitly by respondent’s counsel. 28 U.S.C. § 2254(b)(3). A waiver of exhaustion,
4 thus, may not be implied or inferred. A petitioner satisfies the exhaustion requirement by
5 providing the highest state court with a full and fair opportunity to consider all claims before
6 presenting them to the federal court. Picard v. Connor, 404 U.S. 270, 276 (1971); Middleton v.
7 Cupp, 768 F.2d 1083, 1086 (9th Cir.), cert. denied, 478 U.S. 1021 (1986).

8 In the amended petition, petitioner denied he has filed any petitions, applications,
9 or motions with respect to this judgment in any court, state or federal. (Dkt. No. 14 at 2.)
10 However, in his original petition, petitioner claimed he challenged the denial of parole in an
11 unidentified “District Court,” which was denied in 2009, and that he had a petition or other post-
12 conviction proceeding pending in the District Court for the Northern District of California. (Dkt.
13 No. 1 at 5.) In connection to petitioner’s reference to a pending action, it is unclear whether
14 petitioner was referring to the instant petition, subsequently transferred to this court, or to a
15 different proceeding. In ground three of the amended petition, petitioner claims he was denied
16 parole for a period of seven years in 2010. (Dkt. No. 14 at 5.) It is unclear whether petitioner is
17 challenging this 2010 denial of parole, or whether petitioner could have exhausted his state court
18 remedies for a 2010 parole denial by early 2011.

19 Petitioner is advised that he must have presented each of the grounds contained in
20 the amended petition to the California Supreme Court before he may proceed in the instant
21 action.

22 Accordingly, the amended petition will be dismissed with leave to amend. In any
23 second amended petition, petitioner shall use the court’s form petition and shall include the
24 following:

- 25 1. Petitioner shall name Rick Hill, Warden, Folsom State Prison, as respondent;
- 26 2. Petitioner shall clearly identify the date of the parole decision he challenges;

1 and

2 3. Petitioner shall inform the court whether he has raised all three grounds
3 contained in the amended petition in the California Supreme Court.

4 If petitioner has a copy of the parole decision he challenges, and/or a copy of the
5 decision from the California Supreme Court addressing his claims, he may append them to his
6 second amended petition. In order to assist petitioner in addressing the issue of exhaustion, the
7 Clerk of the Court is directed to send petitioner a copy of the original petition. (Dkt. No. 1.)

8 In accordance with the above, IT IS HEREBY ORDERED that:


9 1. Petitioner's amended application for writ of habeas corpus is dismissed with
10 leave to file a second amended petition within thirty days from the date of this order;

11 2. The second amended petition must be filed on the form employed by this court,
12 must bear the case number assigned to this action and must bear the title "Second Amended
13 Petition";

14 3. In the second amended petition, petitioner shall (a) name Rick Hill, Warden,
15 Folsom State Prison, as respondent; (b) clearly identify the date of the parole decision he
16 challenges; and (c) inform the court whether he has raised all three grounds contained in the
17 amended petition in the California Supreme Court; and

18 4. The Clerk of the Court is directed to send petitioner the court's form for
19 application for writ of habeas corpus, and a copy of petitioner's original petition (dkt. no. 1).

20 DATED: April 15, 2011

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22 
23 KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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