

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

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

MICHAEL A. GOLDMAN,  
Petitioner,

No. CIV S-11-2233-GEB-CMK-P

vs.

FINDINGS AND RECOMMENDATIONS

STEVE MOORE,  
Respondent.

\_\_\_\_\_ /

Petitioner, a state prisoner proceeding pro se, brings this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Pending before the court is respondent’s motion to dismiss (Doc. 22).

At the time this action was commenced, petitioner was a pre-trial detainee. He has since been convicted and is now in custody pursuant to a state court judgment. Respondent argues that the petition must be dismissed as unexhausted because petitioner’s direct appeal is still pending in the California Court of Appeal. The court agrees. See 28 U.S.C. § 2254(b)(1)(A); see also Sherwood v. Tomkins, 716 F.2d 632 (9th Cir. 1983) (holding that a federal habeas petition is premature when the petitioner’s direct criminal appeal is pending in

1 state court); Picard v. Connor, 404 U.S. 270 (1971).

2           Based on the foregoing, the undersigned recommends that respondent's motion to  
3 dismiss (Doc. 22) be granted.

4           These findings and recommendations are submitted to the United States District  
5 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days  
6 after being served with these findings and recommendations, any party may file written  
7 objections with the court. Responses to objections shall be filed within 14 days after service of  
8 objections. Failure to file objections within the specified time may waive the right to appeal.  
9 See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

10  
11 DATED: January 23, 2012

12   
13 **CRAIG M. KELLISON**  
14 UNITED STATES MAGISTRATE JUDGE  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26