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

C.D. ALSTON,

No. 2:13-cv-0078-JAM-CMK-P

Petitioner,

vs.

FINDINGS AND RECOMMENDATION

PEOPLE OF SACRAMENTO,

Respondent.

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Petitioner, proceeding pro se, brings this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Pending before the court is petitioner’s amended petition for a writ of habeas corpus (Doc. 7).

On May 8, 2014, the undersigned issued an order to show cause, requiring petitioner to show cause in writing why her petition should not be summarily dismissed, without prejudice, for failure to exhaust state court remedies. Petitioner has filed a response to the order (Doc. 6), as well as an amended petition (Doc. 7).

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1 In the court's prior order, the undersigned discussed the exhaustion of petitioner's  
2 state court remedies as follows:

3 Rule 4 of the Federal Rules Governing Section 2254 Cases  
4 provides for summary dismissal of a habeas petition "[i]f it plainly  
5 appears from the face of the petition and any exhibits annexed to it  
6 that the petitioner is not entitled to relief in the district court." In  
7 the instant case, it is plain that petitioner is not entitled to federal  
8 habeas relief. In particular, the exhaustion of available state  
9 remedies is required before claims can be presented to the federal  
10 court in a habeas corpus case. See Rose v. Lundy, 455 U.S. 509  
(1982); see also Kelly v. Small, 315 F.3d 1063, 1066 (9th Cir.  
2003); Hunt v. Pliker, 336 F.3d 839 (9th Cir. 2003). A petitioner  
can satisfy the exhaustion requirement by providing the highest  
state court with a full and fair opportunity to consider all claims  
before presenting them to the federal court. See Picard v. Connor,  
404 U.S. 270, 276 (1971), Middleton v. Cupp, 768 F.2d 1083,  
1086 (9th Cir. 1986).

11 Upon review of the instant petition, the court  
12 concludes that petitioner has not exhausted state court remedies as  
13 to any of his claims. Petitioner specifically states in her petition  
14 that she has only appealed her conviction to the California Court of  
15 Appeals, which is still pending, and filed a motion with the  
16 Superior Court of Sacramento County regarding insufficient  
17 evidence and misconduct. None of her claims have been raised to  
18 the California Supreme Court. She has therefore not exhausted her  
19 state remedies prior to filing this action.

20 (Order, Doc. 5).

21 In response to the order to show cause, petitioner acknowledges that she has not  
22 fully exhausted her state court remedies. She again indicates she has an appeal pending in the  
23 California Court of Appeal, but no claim has been raised to the California Supreme Court. She is  
24 essentially requesting this court waive the exhaustion requirement and allow her to proceed with  
25 her petition as she has not been successful in her attempts to address her issues with different  
26 state and federal agencies, including complaints filed with Internal Affairs, the City of  
Sacramento, the District Attorney, the mayor, congress, senators as well as this court. She argues  
if she is required to exhaust her state court remedies, she will be required to complete her short  
sentence, which would be unjust.

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1           However, as set forth above, pursuant to the ruling by the United States Supreme  
2 Court, under 28 U.S.C. § 2254(b), the exhaustion of available state remedies is required before  
3 claims can be granted by the federal court in a habeas corpus case. See Rose v. Lundy, 455 U.S.  
4 509 (1982). “A petitioner may satisfy the exhaustion requirement in two ways: (1) by providing  
5 the highest state court with an opportunity to rule on the merits of the claim . . .; or (2) by  
6 showing that at the time the petitioner filed the habeas petition in federal court no state remedies  
7 are available to the petitioner and the petitioner has not deliberately by-passed the state  
8 remedies.” Batchelor v. Cupp , 693 F.2d 859, 862 (9th Cir. 1982) (citations omitted). The  
9 exhaustion doctrine is based on a policy of federal and state comity, designed to give state courts  
10 the initial opportunity to correct alleged constitutional deprivations. See Picard v. Connor, 404  
11 U.S. 270, 275 (1971); see also Rose, 455 U.S. at 518.

12           Here, petitioner has not exhausted her claims. She has neither provided the  
13 California Supreme Court the opportunity to rule on the merits of her claims, nor has she shown  
14 no state remedies are available. Petitioner’s attempts to have her claims heard by agencies other  
15 than the California Supreme Court are insufficient to meet the exhaustion requirements.  
16 Petitioner acknowledges her lack of exhaustion in her response to the undersigned’s order to  
17 show cause. Her amended petition does not resolve the exhaustion issue, and is not addressed in  
18 any significant way.

19           Upon review of the original petition, the petitioner’s response to the order to show  
20 cause, and her amended petition, the undersigned concludes that petitioner has not exhausted her  
21 state court remedies as to any of her claims. Based on the foregoing, the undersigned  
22 recommends that petitioner’s petition for a writ of habeas corpus (Docs. 1, 7) be summarily  
23 dismissed, without prejudice, for failure to exhaust state court remedies.

24           These findings and recommendations are submitted to the United States District  
25 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days  
26 after being served with these findings and recommendations, any party may file written

1 objections with the court. Responses to objections shall be filed within 14 days after service of  
2 objections. Failure to file objections within the specified time may waive the right to appeal.  
3 See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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5 DATED: October 29, 2014

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7 **CRAIG M. KELLISON**  
8 UNITED STATES MAGISTRATE JUDGE  
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