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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL ANTHONY WILLIAMS,

 Petitioner,

 v.

PEOPLE OF THE STATE OF
CALIFORNIA,

 Respondent.

No. 2:14-cv-0756 TLN DAD P

FINDINGS AND RECOMMENDATIONS

Petitioner, a state prisoner proceeding pro se, has filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On November 11, 2014, counsel for respondent filed the pending motion to dismiss, arguing that the claims in petitioner’s habeas petition are unexhausted. Petitioner has not filed an opposition to the motion.¹

BACKGROUND

On September 8, 2009, petitioner pled no contest to a single count of inflicting corporal injury on the mother of his child and admitted to suffering a prior strike conviction under

¹ On January 6, 2015, the undersigned issued an order to show cause, ordering petitioner to file an opposition to respondent’s motion to dismiss within twenty-one days and warning petitioner that his failure to do so could “be deemed a waiver of any opposition to the granting of the motion.” Nonetheless, petitioner still has not filed an opposition to respondent’s motion. Accordingly, dismissal of this action pursuant to Federal Rule of Civil Procedure 41(b) would also be justified.

1 California's Three Strikes Law. Pursuant to his plea agreement, the Yolo County Superior Court
2 sentenced petitioner to a three year term of probation, which he later violated. On April 6, 2012,
3 the superior court held a probation revocation hearing and revoked petitioner's probation. The
4 court then sentenced petitioner to three years in state prison, doubled to a six year term of
5 imprisonment, due to the prior strike petitioner admitted to as part of his plea agreement. (Pet.
6 Attach., Resp't's Lodged Docs. 1 & 2.)

7 On September 4, 2013, the California Court of Appeal for the Third Appellate District
8 affirmed petitioner's judgment of conviction. (Pet. Attach., Resp't's Lodged Doc. 3.)

9 ANALYSIS

10 In the pending motion to dismiss, counsel for respondent argues that the claims presented
11 by petitioner in the habeas petition pending before this court are unexhausted. Specifically,
12 counsel contends that petitioner never sought review of his judgment of conviction by the
13 California Supreme Court and has not filed any petitions for writ of habeas corpus in the state
14 court system. (Resp't's Mot. to Dismiss at 2.)

15 As noted above, petitioner has not filed any opposition to respondent's motion to dismiss
16 despite being forewarned of the possible consequences of his failure to do so.

17 I. Exhaustion of State Court Remedies

18 State courts must be given the first opportunity to consider and address a state prisoner's
19 habeas corpus claims. See Rhines v. Weber, 544 U.S. 269, 273-74 (2005) (citing Rose v. Lundy,
20 455 U.S. 509, 518-19 (1982)); King v. Ryan, 564 F.3d 1133 (9th Cir. 2009) ("Habeas petitioners
21 have long been required to adjudicate their claims in state court - that is, 'exhaust' them - before
22 seeking relief in federal court."); Farmer v. Baldwin, 497 F.3d 1050, 1053 (9th Cir. 2007) ("This
23 so-called 'exhaustion requirement' is intended to afford 'the state courts a meaningful opportunity
24 to consider allegations of legal error' before a federal habeas court may review a prisoner's
25 claims.") (quoting Vasquez v. Hillery, 474 U.S. 254, 257 (1986)). Generally speaking, a federal
26 court will not grant a state prisoner's application for a writ of habeas corpus unless "the applicant
27 has exhausted the remedies available in the courts of the State." 28 U.S.C. § 2254(b)(1). The

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1 exhaustion requirement will not be deemed to have been waived unless the state, through counsel,
2 expressly waives the requirement. 28 U.S.C. § 2254(b)(3).

3 A petitioner satisfies the exhaustion requirement by fairly presenting to the highest state
4 court all federal claims before presenting those claims for relief to the federal court. See Baldwin
5 v. Reese, 541 U.S. 27, 29 (2004); Duncan v. Henry, 513 U.S. 364, 365 (1995); Picard v. Connor,
6 404 U.S. 270, 276 (1971); Wooten v. Kirkland, 540 F.3d 1019, 1025 (9th Cir. 2008). A federal
7 claim is fairly presented if the petitioner has described the operative facts and the federal legal
8 theory upon which his claim is based. See Wooten, 540 F.3d at 1025 (“Fair presentation requires
9 that a state’s highest court has ‘a fair opportunity to consider . . . and to correct [the] asserted
10 constitutional defect.’”); Lounsbury v. Thompson, 374 F.3d 785, 787 (9th Cir. 2004) (same)
11 (quoting Picard, 404 U.S. at 276)); Kelly v. Small, 315 F.3d 1063, 1066 (9th Cir. 2003),
12 overruled on other grounds by Robbins v. Carey, 481 F.3d 1143, 1146 (9th Cir. 2007); Weaver v.
13 Thompson, 197 F.3d 359, 364 (9th Cir. 1999); see also Bland v. California Dep’t of Corrs., 20
14 F.3d 1469, 1473 (9th Cir. 1994).

15 II. Discussion

16 In this case, petitioner appealed his conviction to the California Court of Appeal for the
17 Third Appellate District, and that court affirmed the judgment of conviction. (Pet. Attach.,
18 Resp’t’s Lodged Doc. 3.) However, according to the California Supreme Court website, to date,
19 petitioner has not filed any appeals or petitions for writ of habeas corpus challenging his Yolo
20 County Superior Court conviction before that court. Thus, petitioner has not fairly presented any
21 of his federal habeas corpus claims to the California Supreme Court as required. Further,
22 petitioner has not alleged that state court remedies are no longer available to him. Accordingly,
23 petitioner’s federal habeas corpus claims are unexhausted and should be dismissed without
24 prejudice.

25 CONCLUSION

26 Accordingly, IT IS HEREBY RECOMMENDED that:

27 1. Respondent’s motion to dismiss for failure to exhaust state court remedies (Doc. No.
28 12) be granted;

