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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARCELLUS ALEXANDER GREENE,
Petitioner,
v.
PELICAN BAY STATE PRISON,
Respondents.

No. 2:14-cv-1826 JAM AC P

FINDINGS AND RECOMMENDATIONS

Petitioner, a state prisoner proceeding pro se and in forma pauperis, has filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Pending before the court is respondent’s motion to dismiss the petition as unexhausted and untimely. ECF No. 10. Petitioner has responded (ECF No. 13) and no reply has been filed.

I. Factual and Procedural Background

Petitioner pled no contest to a charge of possession of a sharp object or weapon by an inmate and on September 17, 2002, was sentenced to a determinate state prison term of eight years. ECF No. 1 at 1; Lodged Doc. No. 1.

The petition indicates that petitioner initiated both a direct appeal and a state petition for writ of habeas corpus, but did not seek review of either in the California Supreme Court. ECF No. 1 at 2-3. Respondent notes that petitioner has an additional forty state collateral filings, but does not elaborate beyond stating that “they do not impact the statute of limitations analysis”

1 because they “were filed either too early, a year or more too late or do not challenge the relevant
2 conviction.” ECF No. 10 at 2. A search of petitioner’s underlying criminal case, Case No.
3 00F01538, on the Sacramento County Superior Court’s online public access site reveals forty-two
4 related cases filed between June 5, 2000, and March 23, 2015.¹ The information for forty of the
5 cases clearly indicates they were petitions for writ of habeas corpus. The other two cases are
6 simply identified as writs. No information regarding the substance of the petitions is discernable
7 from the website.

8 A review of the California Supreme Court’s online docketing system indicates that
9 petitioner has not filed any claims in that court under either the name Marcellus Greene or
10 Marvellous Warrior, the names he uses to identify himself in this case. However, the docket in
11 petitioner’s underlying criminal case, Case No. 00F01538, on the Sacramento County Superior
12 Court’s online public access site, reveals a number of aliases used by petitioner, most being some
13 variation of the two names used in this case. A search of these aliases on the California Supreme
14 Court’s online docketing system reveals a single case, Case No. S171348, filed by petitioner
15 under the name Marvellous Asha Xyah.² According to the docket in that case, petitioner filed a
16 petition for writ of mandate/prohibition on March 18, 2009, that was transferred to the California
17 Court of Appeal, Third Appellate District on April 1, 2009.³

18 The instant petition was filed on July 17, 2014.⁴

19 II. Motion to Dismiss

20 Respondent argues that the petition should be dismissed because petitioner has failed to

21 ¹ This court may take judicial notice of the records of other courts. See United States v. Howard,
22 381 F.3d 873, 876 n.1 (9th Cir. 2004); United States v. Wilson, 631 F.2d 118, 119 (9th Cir.
23 1980); see also Fed. R. Evid. 201 (court may take judicial notice of facts that are capable of
accurate determination by sources whose accuracy cannot reasonably be questioned).

24 ² The party information on the California Supreme Court’s website also identifies petitioner by
his CDCR number, K-29392. See
25 [http://appellatecases.courtinfo.ca.gov/search/case/partiesAndAttorneys.cfm?dist=0&doc_id=1903
026&doc_no=S171348](http://appellatecases.courtinfo.ca.gov/search/case/partiesAndAttorneys.cfm?dist=0&doc_id=1903026&doc_no=S171348)

26 ³ Docket for Case No. S171348 available at:
[http://appellatecases.courtinfo.ca.gov/search/case/dockets.cfm?dist=0&doc_id=1903026&doc_no
=S171348](http://appellatecases.courtinfo.ca.gov/search/case/dockets.cfm?dist=0&doc_id=1903026&doc_no=S171348)

27 ⁴ The prison mailbox rule was used in determining the filing date of petitioner’s federal habeas
28 petition. See Houston v. Lack, 487 U.S. 266 (1988).

1 exhaust his state court remedies by presenting his claims to the California Supreme Court, and
2 because the petition is untimely. ECF No. 10 at 4-5. Respondent further argues that dismissal
3 should be with prejudice because the statute of limitations bars further proceedings. Id.

4 III. Opposition to Motion to Dismiss

5 Petitioner does not deny that he has not exhausted his state court remedies and instead
6 states that he has “been on the wrong medication” and “was deaf, dumb and blind, to [his]
7 objective nature” but he offers no further explanation. ECF No. 13 at 3. Petitioner further
8 requests that if he has filed his petition in the wrong court that the court “[r]emand to where
9 venue is proper.” ECF No. 13 at 3.

10 IV. Discussion

11 Habeas petitioners are required to exhaust state remedies before seeking relief in federal
12 court unless “there is an absence of available State corrective process; or circumstances exist that
13 render such process ineffective to protect the rights of the applicant.” 28 U.S.C. § 2254(b). The
14 exhaustion doctrine ensures that state courts will have a meaningful opportunity to consider
15 allegations of constitutional violations without interference from the federal judiciary. Rose v.
16 Lundy, 455 U.S. 509, 515 (1982). A petitioner satisfies the exhaustion requirement by fairly
17 presenting to the highest state court all federal claims before presenting them to the federal court.
18 See Baldwin v. Reese, 541 U.S. 27, 29 (2004). A federal claim is fairly presented if the petitioner
19 has described the operative facts and the federal legal theory upon which his claim is based. See
20 Wooten v. Kirkland, 540 F.3d 1019, 1025 (9th Cir. 2008), cert. denied, 556 U.S. 1285 (2009).

21 To the extent petitioner may be attempting to argue that he was excused from exhausting
22 his state court remedies, his vague claims that he was “on the wrong medication” and “deaf,
23 dumb and blind to [his] objective nature” are insufficient to establish that the state corrective
24 process was unavailable or ineffective to protect his rights. See Blake v. Baker, 745 F.3d 977,
25 982 (9th Cir. 2014) (explaining that “[w]hile a bald assertion cannot amount to a showing of good
26 cause, a reasonable excuse, supported by evidence to justify a petitioner’s failure to exhaust,
27 will.”) Petitioner offers no explanation why he did not pursue his direct appeal, or any of his
28 numerous collateral appeals, to the California Supreme Court.

1 Petitioner presents no claim or evidence that he has exhausted his state court remedies,
2 and the California Supreme Court’s docketing system indicates that petitioner has submitted only
3 a petition for writ of mandate or prohibition, which does not appear to have been properly filed
4 with that court because it was transferred to the California Court of Appeal, Third Appellate
5 District for disposition. The court can find no evidence that plaintiff filed either a direct appeal or
6 a petition for writ of habeas corpus with the California Supreme Court.

7 With respect to petitioner’s request that the petition be remanded, the petition originated
8 in this court and there is nowhere for the court to remand it to. If petitioner seeks to pursue his
9 claims in state court, he must file a petition in the appropriate state court.

10 Because petitioner did not exhaust his state court remedies, the court need not address
11 whether the petition is timely. However, even if the court sought to determine whether the
12 petition was timely, it would be unable to do so because respondent has provided insufficient
13 documentation to allow for an analysis of the timeliness of the petition. Respondent states that
14 petitioner has filed forty state collateral filings, but has not provided any information on them
15 beyond the general statement that they “were filed either too early, a year or more too late or do
16 not challenge the relevant conviction.” ECF No. 10 at 2. Without information as to the substance
17 of the filings and the grounds on which the state court dismissed them, this court is unable to
18 determine which, if any, of the state collateral actions may toll the statute of limitations. Because
19 the court is unable to evaluate the timeliness of the petition, respondent’s request that the petition
20 be dismissed with prejudice will be denied.

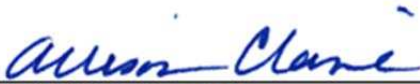
21 Accordingly, IT IS HEREBY RECOMMENDED that:

- 22 1. Respondent’s motion to dismiss (ECF No. 10) be granted and petitioner’s application
23 for a writ of habeas corpus be dismissed.
- 24 2. Respondent’s request to dismiss the petition with prejudice be denied.
- 25 3. The court decline to issue the certificate of appealability referenced in 28 U.S.C. §
26 2253.

27 These findings and recommendations will be submitted to the United States District Judge
28 assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one days

1 after being served with these findings and recommendations, any party may file written
2 objections with the court and serve a copy on all parties. Such a document should be captioned
3 “Objections to Findings and Recommendations.” Any response to the objections shall be filed
4 and served within fourteen days after service of the objections. The parties are advised that
5 failure to file objections within the specified time may waive the right to appeal the District
6 Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

7 DATED: July 12, 2015

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ALLISON CLAIRE
10 UNITED STATES MAGISTRATE JUDGE
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