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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DOUGLAS EUGENE RUSSELL,
Petitioner,
v.
STATE OF CALIFORNIA,
Respondent.

No. 2:14-cv-2755 GGH P

ORDER

Petitioner, a state prisoner proceeding pro se, has filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, and paid the filing fee.¹

The exhaustion of state court remedies is a prerequisite to the granting of a petition for writ of habeas corpus. 28 U.S.C. § 2254(b)(1). If exhaustion is to be waived, it must be waived explicitly by respondent’s counsel. 28 U.S.C. § 2254(b)(3).² A waiver of exhaustion, thus, may not be implied or inferred. A petitioner satisfies the exhaustion requirement by providing the highest state court with a full and fair opportunity to consider all claims before presenting them to

¹ This action is before the undersigned pursuant to the parties’ consent to proceed before a magistrate judge. 28 U.S.C. § 636(c). When a petitioner has consented to the magistrate judge as the trial judge, under the case assignment procedures of this court, no district judge is assigned, if at all, until the respondent appears. No respondent having appeared, the matter proceeds solely before the undersigned.

² A petition may be denied on the merits without exhaustion of state court remedies. 28 U.S.C. § 2254(b)(2).

1 the federal court. Picard v. Connor, 404 U.S. 270, 276 (1971); Middleton v. Cupp, 768 F.2d
2 1083, 1086 (9th Cir. 1985), cert. denied, 478 U.S. 1021 (1986).

3 After reviewing the petition for habeas corpus, the court finds that petitioner has failed to
4 exhaust state court remedies. The claims have not been presented to the California Supreme
5 Court. Further, there is no allegation that state court remedies are no longer available to
6 petitioner. Accordingly, the petition should be dismissed without prejudice.³

7 Good cause appearing, IT IS HEREBY ORDERED that:

8 1. The Clerk of the Court is directed to serve a copy of this order together with a copy of
9 the petition filed in the instant case on the Attorney General of the State of California; and

10 2. Petitioner's application for a writ of habeas corpus is dismissed for failure to exhaust
11 state remedies.

12 Dated: January 7, 2015

13 /s/ Gregory G. Hollows
14 UNITED STATES MAGISTRATE JUDGE

15 GGH:076/Russ2755.103

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25 ³ Petitioner is cautioned that the habeas corpus statute imposes a one year statute of limitations
26 for filing non-capital habeas corpus petitions in federal court. In most cases, the one year period
27 will start to run on the date on which the state court judgment became final by the conclusion of
28 direct review or the expiration of time for seeking direct review, although the statute of
limitations is tolled while a properly filed application for state post-conviction or other collateral
review is pending. 28 U.S.C. § 2244(d).