

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MAURICE JOHNSON,

No. 2: 14-cv-2759 KJN P

Petitioner,

## ORDER

PEOPLE OF THE STATE OF  
CALIFORNIA,

## Respondent.

Petitioner, a state prisoner proceeding without counsel, has filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, together with a request to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. Petitioner consented to the jurisdiction of the undersigned. (ECF No. 4.)

Petitioner submitted a declaration that makes the showing required by § 1915(a). Accordingly, the request to proceed in forma pauperis is granted. 28 U.S.C. § 1915(a).

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).<sup>1</sup> Therefore, a waiver of exhaustion

<sup>1</sup> A petition may be denied on the merits without exhaustion of state court remedies. 28 U.S.C. § 2254(b)(2).

1 may not be implied or inferred. A petitioner satisfies the exhaustion requirement by providing the  
2 highest state court with a full and fair opportunity to consider all claims before presenting them to  
3 the federal court. Picard v. Connor, 404 U.S. 270, 276 (1971); Middleton v. Cupp, 768 F.2d  
4 1083, 1086 (9th Cir. 1985), cert. denied, 478 U.S. 1021 (1986).

5 After reviewing the petition for habeas corpus, the court finds that petitioner has failed to  
6 exhaust state court remedies. Petitioner states that he is seeking to be resentenced pursuant to  
7 Proposition 47. Petitioner indicates that he has not presented his claims to the California  
8 Supreme Court. Further, there is no allegation that state court remedies are no longer available to  
9 petitioner. Accordingly, the petition is dismissed without prejudice.<sup>2</sup>

10 Good cause appearing, IT IS HEREBY ORDERED that:

11 1. Petitioner is granted leave to proceed in forma pauperis;  
12 2. This action is dismissed without prejudice due to petitioner's failure to exhaust state  
13 court remedies.

14 Dated: January 29, 2015

15   
16 KENDALL J. NEWMAN  
17 UNITED STATES MAGISTRATE JUDGE

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20 John2759.103  
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25 <sup>2</sup> 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).