



1 2254 Cases indicate that the court may dismiss a petition for writ of habeas corpus on its own  
2 motion under Rule 4. However, the court should not dismiss a petition without leave to amend  
3 unless it appears that no tenable claim for relief can be pleaded were such leave granted. *Jarvis v.*  
4 *Nelson*, 440 F.2d 13, 14 (9th Cir. 1971). For the reasons explained below, the petition is  
5 dismissed, without leave to amend, on the ground that the claims raised therein are not  
6 exhausted.<sup>2</sup>

7 A district court may not grant a petition for a writ of habeas corpus unless “the applicant  
8 has exhausted the remedies available in the courts of the State,” or unless there is no State  
9 corrective process or “circumstances exist that render such process ineffective to protect the rights  
10 of the applicant.” 28 U.S.C. § 2254(b)(1). A petitioner satisfies the exhaustion requirement by  
11 presenting the “substance of his federal habeas corpus claim” to the state courts. *Picard v.*  
12 *Connor*, 404 U.S. 270, 278 (1971); *see also Duncan v. Henry*, 513 U.S. 364, 365 (1995). For a  
13 California prisoner to exhaust, he must present his claims to the California Supreme Court on  
14 appeal in a petition for review or on post-conviction in a petition for a writ of habeas corpus. *See*  
15 *Carey v. Saffold*, 536 U.S. 223, 239-40 (2002) (describing California’s habeas corpus procedure);  
16 *Gatlin v. Madding*, 189 F.3d 882, 888 (9th Cir. 1999) (to exhaust, prisoner must present claims on  
17 appeal to California Supreme Court in a petition for review). Unless the respondent specifically  
18 consents to the court entertaining unexhausted claims, a petition containing such claims must be  
19 dismissed. *See* 28 U.S.C. § 2254(b)(3); *Picard*, 404 U.S. at 275.

20 Petitioner was convicted on October 30, 2015 and sentenced on May 25, 2016. ECF No.  
21 1. According to the petition, his only post-conviction challenge to his conviction was through a  
22 filing in the Tehama County Superior Court. *Id.* at 7, 13. He explains that he did not appeal the  
23 judgment of conviction or exhaust his state remedies “because [he] thought the Court had given  
24 [him] ½ time already.” *Id.* at 13.

25 Thus, petitioner concedes that he has not presented the claims raised in his petition to the  
26 California Supreme Court and does not purport to have obtained from the respondent an express

---

27 <sup>2</sup> The court may raise the failure to exhaust issue *sua sponte* and may summarily dismiss  
28 on that ground. *See Stone v. San Francisco*, 968 F.2d 850, 856 (9th Cir. 1992).

1 waiver of the exhaustion requirement. *See id.* Therefore, petitioner has failed to exhaust state  
2 court remedies, as the California Supreme Court has not yet had the opportunity to resolve  
3 petitioner's claims on their merits. *See Greene v. Lambert*, 288 F.3d 1081, 1086 (9th Cir. 2002).  
4 This action must therefore be summarily dismissed.

5 Accordingly, IT IS HEREBY ORDERED that the petition is dismissed without leave to  
6 amend and the court declines to issue a certificate of appealability.

7 DATED: March 21, 2017.

8 

9 EDMUND F. BRENNAN  
10 UNITED STATES MAGISTRATE JUDGE  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28