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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MAHKUSAH IMMANUEL TANKINS, Petitioner, v. SUPERIOR COURT, Respondents.	No. 2: 16-cv-2470 KJN P <u>ORDER</u>
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Petitioner, a state prisoner proceeding pro se, 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 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).

Petitioner has consented to the jurisdiction of the undersigned. (ECF No. 6.)

Petitioner requests that his sentence be reduced pursuant to Proposition 47 and California Penal Code § 1170.18. Proposition 47, enacted in November 2014, “makes certain drug – and theft – related offenses misdemeanors, unless they were committed by certain ineligible defendants.” People v. Rivera, 233 Cal.App.4th 1085, 1089 (2015).

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

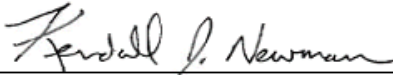
1 explicitly by respondent's counsel. 28 U.S.C. § 2254(b)(3).¹ A waiver of exhaustion, thus, may
2 not be implied or inferred. A petitioner satisfies the exhaustion requirement by providing the
3 highest state court with a full and fair opportunity to consider all claims before presenting them to
4 the federal court. Picard v. Connor, 404 U.S. 270, 276 (1971); Middleton v. Cupp, 768 F.2d
5 1083, 1086 (9th Cir. 1985), cert. denied, 478 U.S. 1021 (1986).

6 After reviewing the petition for habeas corpus, the court finds that petitioner has failed to
7 exhaust state court remedies. The claims have not been presented to the California Supreme
8 Court. Further, there is no allegation that state court remedies are no longer available to
9 petitioner. Accordingly, the petition should be dismissed without prejudice.²

10 Good cause appearing, IT IS HEREBY ORDERED that:

- 11 1. Petitioner is granted leave to proceed in forma pauperis;
- 12 2. The Clerk of the Court is directed to serve a copy of these findings and
13 recommendations together with a copy of the petition filed in the instant case on the Attorney
14 General of the State of California; and
- 15 3. Petitioner's application for a writ of habeas corpus is dismissed for failure to exhaust
16 state remedies.

17 Dated: December 12, 2016

18 
19 _____
20 KENDALL J. NEWMAN
21 UNITED STATES MAGISTRATE JUDGE

22 Tank2470.103

23 _____
24 ¹ A petition may be denied on the merits without exhaustion of state court remedies. 28 U.S.C. §
25 2254(b)(2).

26 ² Petitioner is cautioned that the habeas corpus statute imposes a one year statute of limitations
27 for filing non-capital habeas corpus petitions in federal court. In most cases, the one year period
28 will start to run on the date on which the state court judgment became final by the conclusion of
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).