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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ERIC LEE COOLEY, JR.,  
Petitioner,  
v.  
SHASTA COUNTY SUPERIOR COURT,  
Respondent.

No. 2:16-cv-2979 CKD 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 together with a request to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. Petitioner has submitted a declaration that makes the showing required by § 1915(a). Accordingly, the request to proceed in forma pauperis will be granted. 28 U.S.C. § 1915(a). Petitioner has consented to Magistrate Judge jurisdiction to conduct all proceedings in this action. (ECF No. 4.)

Petitioner challenges his December 2016 conviction for burglary and other offenses, for which the Shasta County Superior Court imposed a sentence of twenty years. Petitioner has not appealed his conviction. (ECF No. 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

1 explicitly by respondent's counsel. 28 U.S.C. § 2254(b)(3).<sup>1</sup> 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 will be 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. The petition is dismissed without prejudice for failure to exhaust state remedies; and
- 13 3. The Clerk of the Court is directed to serve a copy of these findings and

14 recommendations together with a copy of the petition filed in the instant case on the Attorney  
15 General of the State of California.

16 Dated: January 30, 2017



17 CAROLYN K. DELANEY  
18 UNITED STATES MAGISTRATE JUDGE

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

26 <sup>2</sup> 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).