



1 highest state court with a full and fair opportunity to consider all claims before presenting them to  
2 the federal court. Picard v. Connor, 404 U.S. 270, 276 (1971); Middleton v. Cupp, 768 F.2d  
3 1083, 1086 (9th Cir. 1985), cert. denied, 478 U.S. 1021 (1986).

4 Here, petitioner claims that the San Joaquin County Superior court is depriving him of his  
5 right to a speedy trial under the Sixth Amendment. Petitioner was arrested and placed in the San  
6 Joaquin County Jail on December 11, 2017. Petitioner alleges his trial date was set for March 5,  
7 2018, but on that date, petitioner's public defender asked the judge to set a competency hearing,  
8 despite petitioner's order not to do so, and the judge allegedly ignored petitioner's request for a  
9 trial. Petitioner concedes he did not file an appeal or seek review in the California Supreme  
10 Court. (ECF No. 1 at 5.)

11 After reviewing the petition for habeas corpus, the court finds that petitioner has failed to  
12 exhaust state court remedies. The claims have not been presented to the California Supreme  
13 Court.<sup>2</sup> Further, there is no allegation that state court remedies are no longer available to  
14 petitioner.<sup>3</sup> Accordingly, the petition should be dismissed without prejudice.<sup>4</sup>

15 Good cause appearing, IT IS HEREBY ORDERED that:

- 16 1. Petitioner is granted leave to proceed in forma pauperis;

17  
18 <sup>2</sup> On May 1, 2018, the court confirmed that no petition has been filed by petitioner in the  
19 California Supreme Court. The court may take judicial notice of facts that are "not subject to  
20 reasonable dispute because it . . . can be accurately and readily determined from sources whose  
21 accuracy cannot reasonably be questioned," Fed. R. Evid. 201(b), including undisputed  
22 information posted on official websites. Daniels-Hall v. National Education Association, 629  
23 F.3d 992, 999 (9th Cir. 2010). It is appropriate to take judicial notice of the docket sheet of a  
24 California court. White v. Martel, 601 F.3d 882, 885 (9th Cir. 2010). The address of the official  
25 website of the California state courts is [www.courts.ca.gov](http://www.courts.ca.gov).

26 <sup>3</sup> Review of the San Joaquin County Superior Court's case lookup website reflects that  
27 petitioner's cases have been set for jury trial on June 8, 2018. No. STK-CR-MDV-2018-0001280  
28 (misdemeanor domestic violence), and No. STK-CR-FDV-2017-0016317 (felony domestic  
29 violence). The address of the county's official website is <https://cms.sjcourts.org>.

30 <sup>4</sup> Petitioner is cautioned that the habeas corpus statute imposes a one year statute of limitations  
31 for filing non-capital habeas corpus petitions in federal court. In most cases, the one year period  
32 will start to run on the date on which the state court judgment became final by the conclusion of  
33 direct review or the expiration of time for seeking direct review, although the statute of  
34 limitations is tolled while a properly filed application for state post-conviction or other collateral  
35 review is pending. 28 U.S.C. § 2244(d).


1           2. The Clerk of the Court is directed to serve a copy of these findings and  
2 recommendations together with a copy of the petition filed in the instant case on the Attorney  
3 General of the State of California;

4           3. The Clerk of the Court is directed to assign a district judge to this case; and

5           IT IS HEREBY RECOMMENDED that petitioner’s application for a writ of habeas  
6 corpus be dismissed for failure to exhaust state remedies.

7           These findings and recommendations are submitted to the United States District Judge  
8 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
9 after being served with these findings and recommendations, any party may file written  
10 objections with the court and serve a copy on all parties. Such a document should be captioned  
11 “Objections to Magistrate Judge’s Findings and Recommendations.” If petitioner files objections,  
12 he shall also address whether a certificate of appealability should issue and, if so, why and as to  
13 which issues. A certificate of appealability may issue under 28 U.S.C. § 2253 “only if the  
14 applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C.  
15 § 2253(c)(3). Any response to the objections shall be served and filed within fourteen days after  
16 service of the objections. The parties are advised that failure to file objections within the  
17 specified time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951  
18 F.2d 1153 (9th Cir. 1991).

19 Dated: May 2, 2018

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22 KENDALL J. NEWMAN  
23 UNITED STATES MAGISTRATE JUDGE

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