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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JACOREY L. MAYS,
Petitioner,
v.
DAVID PARAMO,
Respondent.

No. 2:18-cv-1897 KJN P

ORDER AND FINDINGS AND
RECOMMENDATIONS

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 will be 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).¹ A waiver of exhaustion, thus, may not be implied or inferred. A petitioner satisfies the exhaustion requirement by providing the highest state court with a full and fair opportunity to consider all claims before presenting them to

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

1 the federal court. Picard v. Connor, 404 U.S. 270, 276 (1971); Middleton v. Cupp, 768 F.2d
2 1083, 1086 (9th Cir. 1985), cert. denied, 478 U.S. 1021 (1986).

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

7 Because the undersigned recommends this action be dismissed, petitioner's motion for
8 appointment of counsel is denied.

9 Good cause appearing, IT IS HEREBY ORDERED that:

- 10 1. Petitioner is granted leave to proceed in forma pauperis;
- 11 2. Petitioner's motion for appointment of counsel (ECF No. 4) is denied; and
- 12 3. 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;

- 15 4. The Clerk of the Court is directed to assign a district judge to this action; and

16 IT IS HEREBY RECOMMENDED that petitioner's application for a writ of habeas
17 corpus be dismissed for failure to exhaust state remedies.

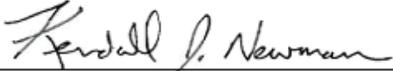
18 These findings and recommendations are submitted to the United States District Judge
19 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
20

21 ² The court may take judicial notice of facts that are "not subject to reasonable dispute
22 because it . . . can be accurately and readily determined from sources whose accuracy cannot
23 reasonably be questioned," Fed. R. Evid. 201(b), including undisputed information posted on
24 official websites. Daniels-Hall v. National Education Association, 629 F.3d 992, 999 (9th Cir.
2010). It is appropriate to take judicial notice of the docket sheet of a California court. White v.
Martel, 601 F.3d 882, 885 (9th Cir. 2010). The address of the official website of the California
state courts is www.courts.ca.gov.

25 ³ 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).

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

11 Dated: July 17, 2018

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14 KENDALL J. NEWMAN
15 UNITED STATES MAGISTRATE JUDGE

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