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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DONTA WILLIAMS,  
  
                                  Petitioner,  
  
                  v.  
  
SUPERIOR COURT OF CALIFORNIA,  
  
                                  Respondent.

No. 2:19-cv-02128 GGH P

ORDER

Petitioner, a state prisoner proceeding in pro se, has filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner has not, however, filed an in forma pauperis affidavit or paid the required filing fee (\$5.00). See 28 U.S.C. §§ 1914(a); 1915(a). Nevertheless, the undersigned will recommend dismissal of the petition for failure to exhaust state remedies.

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

1 After reviewing the petition for habeas corpus, the court finds that petitioner has failed to  
2 exhaust state court remedies. When asked whether petitioner appealed his conviction, sentence,  
3 or commitment to the state trial court, appellate court, or the California Supreme Court, petitioner  
4 marked “No” in his petition. ECF No. 1 at 5 ¶¶8, 9. Moreover, in explaining why petitioner did  
5 not seek to exhaust his state remedies, petitioner stated “a fictitious all caps name was used do the  
6 conviction is not valid under the UCC law merchant govern’s all the courts” and that “its not with  
7 in the scope of juris of the superior court they must follow the UCC guide lines under the law  
8 merchant[.]” Id. at 5 ¶¶10, 11. Petitioner’s belief that the state court is not the proper court to hear  
9 his habeas petition does not entitle him to circumvent 28 U.S.C. § 2254(b)(1)’s requirement that  
10 state remedies be exhausted prior to presenting the claims to federal court. It is clear from the  
11 petition that the claims have not been presented to the California Supreme Court. Further, there is  
12 no allegation that state court remedies (such as might exist for his problematic claims) are no  
13 longer available to petitioner. Accordingly, the petition should be dismissed without prejudice.

14 Good cause appearing, IT IS HEREBY ORDERED that:

- 15 1. The Clerk of the Court is directed to randomly assign a district judge to this case; and
- 16 2. The Clerk of the Court is directed to serve a copy of these findings and  
17 recommendations together with a copy of the petition filed in the instant case on the Attorney  
18 General of the State of California.

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

21 These findings and recommendations will be submitted to the United States District Judge  
22 assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
23 after being served with these findings and recommendations, petitioner may file written

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1 objections with the court. The document should be captioned “Objections to Findings and  
2 Recommendations.” Petitioner is advised that failure to file objections within the specified  
3 time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153  
4 (9th Cir. 1991).

5 Dated: October 25, 2019

6 /s/ Gregory G. Hollows  
7 UNITED STATES MAGISTRATE JUDGE  
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