

1 Under Rule 4 of the Rules Governing Habeas Corpus Cases Under Section 2254, the court
2 must review all petitions for writ of habeas corpus and summarily dismiss any petition if it is
3 plain that the petitioner is not entitled to relief. See also O'Bremski v. Maass, 915 F.2d 418, 420
4 (9th Cir. 1990); Hendricks v. Vasquez, 908 F.2d 490 (9th Cir. 1990). The court has conducted
5 that review and concluded that summary dismissal is warranted in this case due to petitioner's
6 failure to exhaust his state court remedies.

7 **I. Factual and Procedural History**

8 Petitioner entered a no contest plea in the Sacramento County Superior Court to attempted
9 incest and was sentenced to 6 months incarceration in 2018. See ECF No. 1 at 1 (citing
10 California Penal Code §§ 664, 285). In the federal habeas application, petitioner alleges that his
11 Sixth and Seventh Amendment constitutional rights were violated. He also attempts to raise
12 separate claims for relief based on "Forensics, Perjury, and Slave Renting." ECF No. 1 at 4-5. At
13 some point following his conviction, petitioner filed a state habeas corpus application in the
14 Sacramento County Superior Court. ECF No. 1 at 2. Petitioner does not reference any other
15 efforts to exhaust his state court remedies with respect to the claims presented.

16 **II. Exhaustion**

17 The exhaustion of state court remedies is a prerequisite to the granting of a petition for
18 writ of habeas corpus. 28 U.S.C. § 2254(b)(1). "Under the exhaustion requirement, a habeas
19 petitioner challenging a state conviction must first attempt to present his claim in state court."
20 Harrington v. Richter, 562 U.S. 86, 103 (2011). A petitioner satisfies the exhaustion requirement
21 by providing the highest state court with a full and fair opportunity to consider all claims before
22 presenting them to the federal court. Picard v. Connor, 404 U.S. 270, 276 (1971); Middleton v.
23 Cupp, 768 F.2d 1083, 1086 (9th Cir. 1985).

24 Petitioner immediately filed this habeas action following the dismissal of Hasan v. State
25 of California, Case No. 2:19-cv-00963-KJM-DB (E.D. Cal.) in this same court.³ Petitioner's first

26 _____
27 ³ The Court will take judicial notice of its own docket in Hasan v. State of California, Case No.
28 2:19-cv-00963-KJM-DB (E.D. Cal.) in which petitioner challenged the same misdemeanor
conviction at issue in the present case. See Fed. R. Evid. 201(b); Harris v. County of Orange, 682
F.3d 1126, 1131-32 (9th Cir. 2012) (a court may take judicial notice of undisputed matters of

1 federal habeas challenge to his misdemeanor conviction was dismissed without prejudice on
2 January 17, 2020 for failing to exhaust his state court remedies. See Hasan v. State of California,
3 Case No. 2:19-cv-00963-KJM-DB (E.D. Cal.). The instant action was filed on January 27, 2020,
4 a mere 10 days later. A review of the pending federal habeas petition demonstrates that petitioner
5 did not make any effort to exhaust his state court remedies in the California Supreme Court
6 following the dismissal of his prior federal habeas petition. For all of these reasons, after
7 reviewing the petition for habeas corpus, the court finds that petitioner has failed to exhaust state
8 court remedies. See 28 U.S.C. § 2254(b)(1)(A). His claims have still not been presented to the
9 California Supreme Court. Further, there is no allegation that state court remedies are no longer
10 available to petitioner. Petitioner made no effort to exhaust his state court remedies in the 10
11 days after his prior habeas petition challenging the same misdemeanor conviction was dismissed
12 due to lack of exhaustion. See Hasan v. State of California, Case No. 2:19-cv-00963-KJM-DB
13 (E.D. Cal. Jan. 17, 2020).

14 The Ninth Circuit has held that a federal court may sua sponte raise a petitioner's failure
15 to exhaust state court remedies. See Stone v. City and County of San Francisco, 968 F.2d 850,
16 856 (9th Cir. 1992); see also Granberry v. Greer, 481 U.S. 129, 134-35 (1987). Once a court
17 determines that a habeas petition contains only unexhausted claims, it may dismiss the petition for
18 failure to exhaust. Rose v. Lundy, 455 U.S. 509, 521-22 (1982) (emphasizing that a court cannot
19 consider a petition that has not been exhausted); Rasberry v. Garcia, 448 F.3d 1150, 1154 (9th
20 Cir. 2006). Upon review of the habeas petition, it plainly appears that all of the claims are
21 unexhausted. See Rule 4, Rules Governing Habeas Corpus Cases Under Section 2254.
22 Accordingly, the instant petition should be summarily dismissed without prejudice for failing to
23 exhaust state court remedies.

24 **III. Plain Language Summary for Pro Se Party**

25 The following information is meant to explain this order in plain English and is not
26 intended as legal advice.

27 _____
28 public record including documents on file in federal or state courts).

1 The court has reviewed your federal habeas petition and concluded that it should be
2 dismissed without requiring a response from the government because you made no efforts to
3 exhaust your state court remedies since your last federal habeas challenge to your misdemeanor
4 conviction was dismissed for the same reason. If you disagree with this result you can explain
5 why by filing “Objections to Magistrate Judge’s Findings and Recommendations” within 30 days
6 from the date of this order.

7 Accordingly, IT IS HERBY ORDERED that the Clerk of Court randomly assign this
8 matter to a district court judge.

9 IT IS FURTHER RECOMMENDED that petitioner’s application for writ of habeas
10 corpus be summarily dismissed without prejudice for failure to exhaust state court remedies.

11 These findings and recommendations are submitted to the United States District Judge
12 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within thirty days after
13 being served with these findings and recommendations, any party may file written objections with
14 the court and serve a copy on all parties. Such a document should be captioned “Objections to
15 Magistrate Judge’s Findings and Recommendations.” In his objections petitioner may address
16 whether a certificate of appealability should issue in the event he files an appeal of the judgment
17 in this case. See Rule 11, Federal Rules Governing Section 2254 Cases (the district court must
18 issue or deny a certificate of appealability when it enters a final order adverse to the applicant).
19 Where, as here, a habeas petition is dismissed on procedural grounds, a certificate of appealability
20 “should issue if the prisoner can show: (1) ‘that jurists of reason would find it debatable whether
21 the district court was correct in its procedural ruling;’ and (2) ‘that jurists of reason would find it
22 debatable whether the petition states a valid claim of the denial of a constitutional right.’” Morris
23 v. Woodford, 229 F.3d 775, 780 (9th Cir. 2000) (quoting Slack v. McDaniel, 529 U.S. 473, 484
24 (2000)). Any response to the objections shall be served and filed within fourteen days after

25 ////

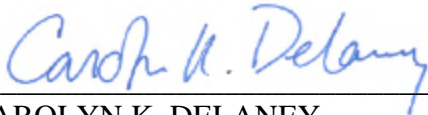
26 ////

27 ////

28 ////

1 service of the objections. The parties are advised that failure to file objections within the
2 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951
3 F.2d 1153 (9th Cir. 1991).

4 Dated: April 6, 2020



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

5
6
7
8
9
10
11
12 12/hasa0188.summarydismissF&R.docx
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28