IN THE UNITED ST	ATES DISTRICT COURT
FOR THE EASTERN D	DISTRICT OF CALIFORNIA
DANIEL DEAN SHEETS,	No. 2:21-CV-0301-JAM-DMC-P
Petitioner,	
v.	FINDINGS AND RECOMMENDATIONS
KATHLEEN ALLISON,	
Respondent.	
Petitioner, a state prisoner proceeding pro se, brings this petition for a writ of	
habeas corpus pursuant to 28 U.S.C. § 2254.	Pending before the Court is Respondent's motion to
dismiss, ECF No. 16. Respondent has lodged	relevant state court records, ECF No. 18.
Petitioner has filed an opposition, ECF No. 19	, and Respondent has replied, ECF No. 20.
Petitioner has also filed a response to Respond	lent's reply, ECF No. 22. According to
Respondent, Petitioner's sole claim for compa	ssionate release is unexhausted and fails to state a
cognizable federal habeas claim.	
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	FOR THE EASTERN D DANIEL DEAN SHEETS, Petitioner, v. KATHLEEN ALLISON, Respondent. Petitioner, a state prisoner proc habeas corpus pursuant to 28 U.S.C. § 2254. I dismiss, ECF No. 16. Respondent has lodged Petitioner has filed an opposition, ECF No. 19 Petitioner has also filed a response to Respond Respondent, Petitioner's sole claim for compa cognizable federal habeas claim. /// ///

1	I. BACKGROUND
2	This action proceeds on Petitioner's first amended petition. See ECF No. 8.
3	Petitioner states that he was convicted in 1992 after a jury trial on various counts of robbery and
4	kidnapping. See id. at 1. For his sole ground for relief, Petitioner states: "Compassionate
5	release/reduction of sentence due to national emergency." <u>Id.</u> at 4. Attached to Petitioner's
6	amended petition is a December 7, 2020, order of the California Court of Appeal stating:
7	"Petitioner's emergency petition for a reduction in sentence or compassionate release is treated as
8	a petition for writ of habeas corpus, and as such, is denied." Id. at 10-11; see also ECF No. 18-8
9	(lodged state court record).
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11	II. DISCUSSION
12	Respondent argues that this case must be dismissed because Petitioner's claim is
13	unexhausted and not cognizable. The Court agrees.
14	Under 28 U.S.C. § 2254(b), the exhaustion of available state remedies is required
15	before claims can be granted by the federal court in a habeas corpus case. See Rose v. Lundy,
16	455 U.S. 509 (1982); see also Kelly v. Small, 315 F.3d 1063, 1066 (9th Cir. 2003); Hunt v. Pliler,
17	336 F.3d 839 (9th Cir. 2003). The exhaustion doctrine is based on a policy of federal and state
18	comity, designed to give state courts the initial opportunity to correct alleged constitutional
19	deprivations. See Picard v. Connor, 404 U.S. 270, 275 (1971); see also Rose, 455 U.S. at 518.
20	"A petitioner may satisfy the exhaustion requirement in two ways: (1) by providing the highest
21	state court with an opportunity to rule on the merits of the claim; or (2) by showing that at the
22	time the petitioner filed the habeas petition in federal court no state remedies are available to the
23	petitioner and the petitioner has not deliberately by-passed the state remedies." <u>Batchelor v.</u>
24	Cupp, 693 F.2d 859, 862 (9th Cir. 1982) (citations omitted). Exhaustion is not a jurisdictional
25	requirement and the court may raise the issue sua sponte. See Simmons v. Blodgett, 110 F.3d 39,
26	41 (9th Cir. 1997).
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1	Regardless of whether the claim was raised on direct appeal or in a post-conviction
2	proceeding, the exhaustion doctrine requires that each claim be fairly presented to the state's
3	highest court. See Castille v. Peoples, 489 U.S. 346 (1989). Resolution of this matter is thus
4	simple – it should be dismissed as unexhausted because there is no evidence Petitioner ever
5	presented his claim – assuming it is cognizable – to the California Supreme Court.
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7	III. CONCLUSION
8	Based on the foregoing, the undersigned recommends that Respondent's motion to
9	dismiss, ECF No. 16, be granted.
10	These findings and recommendations are submitted to the United States District
11	Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(l). Within 14 days
12	after being served with these findings and recommendations, any party may file written objections
13	with the Court. Responses to objections shall be filed within 14 days after service of objections.
14	Failure to file objections within the specified time may waive the right to appeal. See Martinez v.
15	<u>Ylst</u> , 951 F.2d 1153 (9th Cir. 1991).
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17	Dated: December 13, 2021
18	DENNIS M. COTA
19	UNITED STATES MAGISTRATE JUDGE
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