

1 therefore, may not be implied or inferred. A petitioner satisfies the exhaustion requirement by
2 providing the highest state court with a full and fair opportunity to consider all claims before
3 presenting them to the federal court. Picard v. Connor, 404 U.S. 270, 276 (1971); Middleton v.
4 Cupp, 768 F.2d 1083, 1086 (9th Cir. 1985), cert. denied, 478 U.S. 1021 (1986).

5 The state court has had an opportunity to rule on the merits when the petitioner has fairly
6 presented the claim to that court. The fair presentation requirement is met where the petitioner has
7 described the operative facts and legal theory on which his claim is based. Picard, 404 U.S. at
8 277-78. Generally, it is “not enough that all the facts necessary to support the federal claim were
9 before the state courts . . . or that a somewhat similar state-law claim was made.” Anderson v.
10 Harless, 459 U.S. 4, 6 (1982). Instead,

11 [i]f state courts are to be given the opportunity to correct alleged
12 violations of prisoners’ federal rights, they must surely be alerted to
13 the fact that the prisoners are asserting claims under the United States
14 Constitution. If a habeas petitioner wishes to claim that an
evidentiary ruling at a state court trial denied him the due process of
law guaranteed by the Fourteenth Amendment, he must say so, not
only in federal court, but in state court.

15 Duncan v. Henry, 513 U.S. 364, 365 (1995). Accordingly, “a claim for relief in habeas corpus
16 must include reference to a specific federal constitutional guarantee, as well as a statement of the
17 facts which entitle the petitioner to relief.” Gray v. Netherland, 518 U.S. 152, 162-63 (1996). The
18 United States Supreme Court has held that a federal district court may not entertain a petition for
19 habeas corpus unless the petitioner has exhausted state remedies with respect to each of the
20 claims raised. Rose v. Lundy, 455 U.S. 509 (1982). A mixed petition containing both exhausted
21 and unexhausted claims must be dismissed.

22 Petitioner raises three grounds for relief in his petition. In the first ground for relief,
23 petitioner claims that due to negative photo-lineup identification, and negative results in forensic
24 reports, he was wrongfully accused of the murder, resulting in a wrongful conviction. (ECF No. 1
25 at 5.) In the second ground for relief, petitioner claims the jury made an inconclusive decision as
26 to the major participant or aider or abettor finding. (Id.) In the third ground for relief, petitioner
27 claims witness testimony failed to identify him and the court excluded key defense witnesses.
28 (Id.)

1 Based on the face of the petition, the court finds petitioner has failed to exhaust state court
2 remedies as to the first ground for relief, which petitioner states has not been presented to any
3 other court. (See ECF No. 1 at 5.)² The petition is a mixed petition containing both exhausted and
4 unexhausted claims and must be dismissed. Good cause appearing, petitioner will be granted
5 thirty days to file an amended petition raising only exhausted claims.³

6 In accordance with the above, IT IS HEREBY ORDERED that:

7 1. The Clerk of the Court shall provide plaintiff with a copy of the court's form habeas
8 corpus petition;

9 2. The petition for writ of habeas corpus is dismissed with leave to amend; and

10 3. Petitioner is granted thirty days from the date of this order to file an amended petition
11 raising only exhausted claims. Failure to comply with this order will result in a recommendation
12 that this action be dismissed without prejudice.

13 Dated: January 19, 2023

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DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE

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20 _____
21 ² The petition's grounds for relief also fail to reference a specific federal constitutional
guarantee. See Gray, 518 U.S. at 162.

22 ³Petitioner is cautioned that if he chooses to proceed on an amended petition raising only
23 exhausted claims, he will risk forfeiting consideration of the unexhausted claims in this or any
24 other federal court. See McCleskey v. Zant, 499 U.S. 467 (1991); see also Rose, 455 U.S. at 520-
21; Rule 9(b), Rules Governing Section 2254 Cases.

25 Petitioner is further cautioned that the habeas corpus statute imposes a one-year statute of
26 limitations for filing non-capital habeas corpus petitions in federal court. In most cases, the one-
27 year period will start to run on the date on which the state court judgment became final by the
28 conclusion of 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).