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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
EUREKA DIVISION

ROBERTO ANTONIO MENDOZA,

Petitioner,

No. C 14-3446 NJV (PR)

vs.

**ORDER FOR PETITIONER TO
SHOW CAUSE**

S. FRAUENHEIM,

Respondent.

Petitioner, a state prisoner, filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. (Doc. 5.) Petitioner was convicted in Contra Costa County, which is in this district, therefore venue is proper here. See 28 U.S.C. § 2241(d). Petitioner paid the filing fee.

BACKGROUND

A jury convicted petitioner of several counts of sexual acts with a child. He was sentenced to 104 year to life in prison.

DISCUSSION

A. Standard of Review

This court may entertain a petition for writ of habeas corpus "in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a); *Rose v. Hodges*, 423 U.S. 19, 21 (1975). Habeas corpus petitions must meet heightened pleading requirements. *McFarland v. Scott*, 512 U.S. 849, 856 (1994). An application for a federal writ of habeas corpus filed by a prisoner who is in state custody pursuant to a judgment of a state court must "specify all the grounds for relief available to the petitioner ... [and] state the facts supporting each ground." Rule 2(c) of the Rules

1 Governing § 2254 Cases, 28 U.S.C. foll. § 2254. “[N]otice’ pleading is not sufficient, for the
2 petition is expected to state facts that point to a ‘real possibility of constitutional error.’”
3 Rule 4 Advisory Committee Notes (quoting *Aubut v. Maine*, 431 F.2d 688, 689 (1st Cir.
4 1970)). “Habeas petitions which appear on their face to be legally insufficient are subject
5 to summary dismissal.” *Calderon v. United States Dist. Court (Nicolaus)*, 98 F.3d 1102,
6 1108 (9th Cir. 1996) (Schroeder, J., concurring).

7 **B. Legal Claims**

8 The California Court of Appeal affirmed the judgment and denied a habeas petition
9 on August 22, 2013. *People v. Mendoza*, 2013 WL 4509974 (Cal. App. 1 Dist., 2013).
10 Petitioner has filed a request for a stay and he states he is exhausting state remedies as
11 his appellate attorney failed to file a petition for review in the California Supreme Court and
12 he states a petition is pending. Court records indicate that a petition in case S219852 was
13 filed on July 10, 2014, with the California Supreme Court.

14 Before he may challenge either the fact or length of his confinement in a habeas
15 petition in this court, petitioner must present to the California Supreme Court any claims he
16 wishes to raise in this court. See *Rose v. Lundy*, 455 U.S. 509, 522 (1982) (holding every
17 claim raised in federal habeas petition must be exhausted). The general rule is that a
18 federal district court must dismiss a federal habeas petition containing any claim as to
19 which state remedies have not been exhausted. *Id.*

20 A fully unexhausted federal habeas petition may not be stayed and must be
21 dismissed. See, e.g., *Raspberry v. Garcia*, 448 F.3d 1150, 1154 (9th Cir. 2006) (holding
22 that a fully unexhausted petition may not be stayed and observing: “Once a district court
23 determines that a habeas petition contains only unexhausted claims, it need not inquire
24 further as to the petitioner’s intentions. Instead, it may simply dismiss the habeas petition
25 for failure to exhaust.”); *Jones v. McDaniel*, 320 Fed. Appx. 784, 786 (9th Cir.2009)
26 (affirming the dismissal of a fully unexhausted petition and denial of a stay, because a
27 “*Rhines* stay is only available for a mixed habeas petition where at least some of the claims
28 have been exhausted, and none of [petitioner’s] claims were exhausted”). It appears that

1 petitioner has presented a fully unexhausted petition. If this is correct, the petition must be
2 dismissed without prejudice and may be re-filed once the claims have been exhausted.
3 However, petitioner will be provided an opportunity to demonstrate that some of the claims
4 have already been exhausted.

5 **CONCLUSION**

6 Petitioner shall show cause within **fourteen (14) days** of the date of service of this
7 order why this petition should not be dismissed without prejudice as unexhausted. Failure
8 to file a response within the designated time will result in the dismissal of this action.

9
10 **IT IS SO ORDERED.**

11 Dated: August 20, 2014.



NANDOR J. VADAS
United States Magistrate Judge

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
EUREKA DIVISION

ROBERTO ANTONIO MENDOZA,

No.1:14-CV-3446 NJV

Petitioner,

CERTIFICATE OF SERVICE

v.

S. FRAUENHEIM,

Respondent.

I, the undersigned, hereby certify that on August 20, 2014, I served a true and correct copy of the attached by placing said copy in a postage paid envelope addressed to the person(s) listed below, by depositing said envelope in the U.S. Mail.

Roberto Antonio Mendoza
CDCR # AH-2211
Pleasant Valley State Prison
A3-215
P.O. Box 8500
Coalinga, CA 93210

/s/ Linn Van Meter
Linn Van Meter
Administrative Law Clerk to the
Honorable Nandor J. Vadas