

United States District Court
For the Northern District of California

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E-Filed 4/15/10

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

OSCAR PEARSON,
Petitioner,

No. C 09-2477 RS (PR)
ORDER OF DISMISSAL

v.

CONTRA COSTA COUNTY SHERIFF,
et al.,
Respondents.

INTRODUCTION

This is a federal habeas corpus action filed by a *pro se* state prisoner pursuant to 28 U.S.C. § 2254. For the reasons stated herein, respondents' motion to dismiss the petition for failure to exhaust state judicial remedies (Docket No. 16) is GRANTED. Accordingly, the petition is DISMISSED without prejudice to petitioner's filing of proof that he exhausted his state judicial remedies.

DISCUSSION

Prisoners in state custody who wish to challenge collaterally in federal habeas proceedings either the fact or length of their confinement are first required to exhaust

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1 state judicial remedies, either on direct appeal or through collateral proceedings, by
2 presenting the highest state court available with a fair opportunity to rule on the merits
3 of each and every claim they seek to raise in federal court. *See* 28 U.S.C. § 2254(b),
4 (c); *Rose v. Lundy*, 455 U.S. 509, 515–16 (1982). The state’s highest court must be given an
5 opportunity to rule on the claims even if review is discretionary. *See O’Sullivan v. Boerckel*,
6 526 U.S. 838, 845 (1999) (petitioner must invoke “one complete round of the State’s
7 established appellate review process.”). Even though non-exhaustion is an affirmative
8 defense, the petitioner bears the burden of proof that state judicial remedies were properly
9 exhausted. *Parker v. Kelchner*, 429 F.3d 58, 62 (3d Cir. 2005). If available state remedies
10 have not been exhausted as to all claims, the district court must dismiss the petition. *See*
11 *Rose*, 455 U.S. at 510.

12 Respondents contend that the instant petition is unexhausted because petitioner never
13 presented his claims to the California Supreme Court for decision. (Mot. to Dismiss
14 (“MTD”) at 3.) In the petition, petitioner does not state that he presented his claims to the
15 California Supreme Court. (Pet. at 4–5.) Petitioner, in his opposition to the motion,
16 concedes that he has not exhausted his claims: “petitioner would suggest that because of
17 state officials intentional [a]ct, any further attempts by him to exhaust state administrative
18 remedies would be inadequate, without support.” (Opp. to MTD at 1–2.)

19 Having reviewed the papers and documents submitted by the parties, this Court
20 concludes that petitioner has not established that he fairly presented his claims to the
21 California Supreme Court for decision. Specifically, petitioner concedes that he has not
22 exhausted his state remedies. Therefore, petitioner has failed to meet his burden of proof that
23 state judicial remedies were properly exhausted with respect to these claims. *See Parker*,
24 429 F.3d at 62. Accordingly, respondents’ motion to dismiss the claims as unexhausted is
25 GRANTED. The petition is DISMISSED.

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CONCLUSION

For the reasons stated above, respondents’ motion to dismiss is GRANTED. Accordingly, the petition is DISMISSED without prejudice to petitioner’s filing with the Court an amended petition that includes proof that he presented his claims to, and that they were ruled on by, the California Supreme Court.

A certificate of appealability will not issue. Petitioner has not shown “that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

This order terminates Docket No. 16.

The Clerk shall terminate the pending motion, enter judgment in favor of respondents, and close the file.

IT IS SO ORDERED.

DATED: April 14, 2010


RICHARD SEEBORG
United States District Judge

1 **THIS IS TO CERTIFY THAT A HARD COPY OF THIS ORDER WAS MAILED TO:**

2 Oscar Maurice Pearson
3 T-91151
4 San Quentin State Prison
5 San Quentin, Ca 94974

6
7 DATED: 04/15/2010

8 s/ Chambers Staff
9 Chambers of Judge Richard Seeborg

10 * Counsel are responsible for distributing copies of this document to any co-counsel who
11 have not registered with the Court's electronic filing system.

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