

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FILED
OCT 29 2009
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT,
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BRETTE J. D. ROBINSON,
Petitioner,
v.
C.M.F. Warden,
Respondent.

No. C 09-2642 MHP (pr)
ORDER OF DISMISSAL

Brette J. D. Robinson has filed a pro se petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, in which he challenges a 2007 conviction from Sonoma County Superior Court. His petition is now before the court for review pursuant to 28 U.S.C. §2243 and Rule 4 of the Rules Governing Section 2254 Cases.

Prisoners in state custody who wish to challenge either the fact or length of their confinement in federal court by a petition for writ of habeas corpus are first required to exhaust state judicial remedies, either on direct appeal or through collateral proceedings, by presenting the highest state court available with a fair opportunity to rule on the merits of each and every issue they seek to raise in federal court. 28 U.S.C. § 2254(b),(c); Granberry v. Greer, 481 U.S. 129, 133-34 (1987). Robinson has not done so and has not presented any exceptional circumstances to excuse his doing so. See id.

Robinson's petition states that he did not seek review in the California Supreme Court. See Petition, p. 5 (response to question 9). He does not state that he filed any habeas petition in that court, either. Because neither a petition for review nor a petition for writ of habeas corpus was filed there, the California Supreme Court has not been provided a fair opportunity

1 to rule on the merits of Robinson's claims. Robinson has an avenue to the California
2 Supreme Court available: he can file a state habeas petition there. Not only has the
3 California Supreme Court not been given a fair opportunity to rule on the merits of the
4 petition, the California Court of Appeal also may not have reached the merits of Robinson's
5 habeas petition because the petition he sent to this court lists the court as the California Court
6 of Appeal - First Appellate District, see id. at 1, which raises the possibility that Robinson
7 mailed his habeas petition to the wrong court. In any event, he has not exhausted state court
8 remedies.

9 Robinson must file a habeas petition in state court either by filing first in the First
10 Appellate District and then in the California Supreme Court or first in the California
11 Supreme Court to give the state's highest court a fair opportunity to rule on the merits of all
12 his claims before presenting his claims in a federal habeas petition.

13 For the foregoing reasons, this action is DISMISSED without prejudice to Robinson
14 filing a new habeas action after available state judicial remedies are exhausted. The in forma
15 pauperis application is GRANTED. (Docket # 4.) The clerk shall close the file.

16 IT IS SO ORDERED.

17 DATED: October 29, 2009


Marilyn Hall Patel
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

BRETTE J D ROBINSON,
Plaintiff,

Case Number: CV09-02642 MHP
CERTIFICATE OF SERVICE

v.

C M F et al,
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on October 29, 2009, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Brette James Robinson F-84773
California Medical Facility
P.O. Box 2500
Vacaville, CA 95696-2500

Dated: October 29, 2009


Richard W. Wieking, Clerk
By: Lashanda Scott, Deputy Clerk