

1 be granted, unless it appears from the application that the applicant or person detained is
2 not entitled thereto.” 28 U.S.C. § 2243. Summary dismissal is appropriate only where
3 the allegations in the petition are vague, conclusory, palpably incredible, or patently
4 frivolous or false. *See Hendricks v. Vasquez*, 908 F.2d 490, 491 (9th Cir. 1990) (citing
5 *Blackledge v. Allison*, 431 U.S. 63, 75-76 (1977)).

6 Prisoners in state custody who wish to challenge collaterally in federal habeas
7 proceedings either the fact or length of their confinement are first required to exhaust
8 state judicial remedies, either on direct appeal or through collateral proceedings, by
9 presenting the highest state court available with a fair opportunity to rule on the merits of
10 each and every claim they seek to raise in federal court. *See* 28 U.S.C. § 2254(b), (c);
11 *Rose*, 455 U.S. at 515-16. The Ninth Circuit has held that the appropriate time to assess
12 whether a prisoner has exhausted his state remedies is when the federal petition is filed,
13 not when it comes on for hearing in the district court or court of appeals, *Gatlin v.*
14 *Madding*, 189 F.3d 882, 889 (9th Cir. 1999); *Brown v. Maass*, 11 F.3d 914, 915 (9th Cir.
15 1993), and that if the petitioner exhausts after filing, he can bring that up in a subsequent
16 petition, *Gatlin*, 189 F.3d at 889.

17 As Petitioner has apparently filed this unexhausted action in the wrong court, the
18 instant petition for a writ of habeas corpus is hereby DISMISSED without prejudice to
19 Petitioner’s refiling after all his claims have been exhausted in accordance with
20 28 U.S.C. § 2254(b)-(c). *See Rose*, 455 U.S. at 522.

21 The Clerk shall close the file, enter judgment in accordance with this order and
22 send Petitioner a copy of this Court’s habeas corpus form along with this order.

23 IT IS SO ORDERED.

24 DATED: November 13, 2009

25 
26 _____
27 JEFFREY S. WHITE
28 United States District Judge

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA
4

5 JOSEPH GRIMES,
6

7 Plaintiff,

8 v.

9 SALINAS VALLEY STATE PRISON et al,
10

11 Defendant.
_____ /

Case Number: CV09-04345 JSW

CERTIFICATE OF SERVICE

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

14 That on November 17, 2009, I SERVED a true and correct copy(ies) of the attached, by placing
15 said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by
16 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office
17 delivery receptacle located in the Clerk's office.

18 Joseph Grimes
19 Salinas Valley State Prison
20 P.O. Box 4050
21 D72759
22 Soledad, CA 93960-1050

23 Dated: November 17, 2009

Jennifer Ottolini

Richard W. Winking, Clerk

By: Jennifer Ottolini, Deputy Clerk
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