

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

PAUL A. SANTELLANO,

No. C-11-1239 TEH (PR)

Petitioner,

v.

ORDER OF DISMISSAL; GRANTING
LEAVE TO PROCEED IN FORMA
PAUPERIS

SANTA CLARA COUNTY, et. al.,

Respondent(s).

(Doc. ## 2 & 4)

_____ /

Petitioner, a state prisoner serving his sentence at the Santa Clara County Jail in San Jose, California, has filed a pro se Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2254 challenging a judgment of conviction following his guilty plea. Doc. #1. He also seeks leave to proceed in forma pauperis, Doc. ## 2 & 4, which the Court now GRANTS. For the reasons set forth below, the Petition will be DISMISSED.

I

According to the Petition, Petitioner pled guilty to violating California Penal Code section 290.11(b) and was sentenced

1 to sixteen months in state custody. Doc. #1 at 2. The petition
2 also shows that Petitioner did not appeal his conviction and
3 sentence, see Doc. #1 at 3, and that he has a post-conviction
4 petition pending in the California Court of Appeal. See id. at 5.

6 II

7 This Court may entertain a Petition for a Writ of Habeas
8 Corpus "in behalf of a person in custody pursuant to the judgment of
9 a State court only on the ground that he is in custody in violation
10 of the Constitution or laws or treaties of the United States." 28
11 U.S.C. § 2254(a). It shall "award the writ or issue an order
12 directing the respondent to show cause why the writ should not be
13 granted, unless it appears from the application that the applicant
14 or person detained is not entitled thereto." Id. § 2243.

15 A prisoner in state custody who wishes to challenge either
16 the fact or length of his confinement by filing a federal Petition
17 for Writ of Habeas Corpus must first exhaust state judicial
18 remedies, either on direct appeal or through collateral proceedings,
19 by presenting the highest state court available with a fair
20 opportunity to rule on the merits of each and every issue he seeks
21 to raise in federal court. See 28 U.S.C. § 2254(b) & (c); Granberry
22 v. Greer, 481 U.S. 129, 133-34 (1987). A dismissal solely for
23 failure to exhaust is not a bar to Petitioner's returning to federal
24 court after exhausting available state remedies. See Trimble v.
25 City of Santa Rosa, 49 F.3d 583, 586 (9th Cir. 1995).

26 Because it appears from the Petition that Petitioner has
27 not presented any of his claims to the California Supreme Court, he
28

1 has not exhausted his state court remedies. As such, the Petition
2 must be dismissed. See Rose v. Lundy, 455 U.S. 509, 510 (1982).

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4 III

5 For the foregoing reasons and for good cause shown,

6 1. Petitioner's request to proceed in forma pauperis
7 (Doc. ## 2 & 4) is GRANTED.

8 2. The Petition is DISMISSED WITHOUT PREJUDICE to
9 Petitioner's filing a new federal habeas petition once he has
10 exhausted state remedies by presenting his claims to the California
11 Supreme Court.

12 The Clerk is directed to dismiss any pending motions as
13 moot and close the file.

14
15 IT IS SO ORDERED.

16
17 DATED 10/11/2011



THELTON E. HENDERSON
United States District Judge