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

DAVID PATRICK BRUTON,	)	
	)	
Petitioner,	)	No. C 11-4415 CRB (PR)
	)	
vs.	)	ORDER OF DISMISSAL
	)	
CLIFF ALLENBY, Director of	)	
California's Dep't of Mental Health,	)	
	)	
Respondent.	)	
	)	

Petitioner, a state prisoner confined at Napa State Hospital pursuant to a judgment from Contra Costa County Superior Court, seeks a writ of habeas corpus under 28 U.S.C. § 2254.

Prisoners in state custody who wish to challenge collaterally in federal habeas corpus proceedings either the fact or length of their confinement 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 claim they seek to raise in federal court. See 28 U.S.C. § 2254(b)-(c). Petitioner has not done so. He has not presented the Supreme Court of California with an opportunity to consider and rule on his claims. See O’Sullivan v. Boerckel, 526 U.S. 838, 845 (1999) (state’s highest court must be given opportunity to rule on claims even if review

1 is discretionary); Larche v. Simons, 53 F.3d 1068, 1071-72 (9th Cir. 1995)  
2 (Supreme Court of California must be given at least one opportunity to review  
3 state prisoners' federal claims). The petition for a writ of habeas corpus therefore  
4 is DISMISSED without prejudice to refiling after exhausting state judicial  
5 remedies.

6 The clerk shall enter judgment in accordance with this order and close the  
7 file.

8 SO ORDERED.

9 DATED: Sept. 9, 2011

  
10 CHARLES R. BREYER  
11 United States District Judge  
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