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

MARJORIE KNOLLER,
Petitioner,

No. C 12-00996 WHA

v.

WALTER MILLER, Warden, Valley State
Prison for Women,
Respondent.

**ORDER DENYING
RESPONDENT'S MOTION TO
DISMISS HABEAS CORPUS
PETITION**

INTRODUCTION

In this habeas corpus proceeding, respondent moves to dismiss the petition for failure to exhaust state remedies. Petitioner has filed an opposition, to which respondent has replied. For the reasons stated below, respondent's motion is **DENIED**.

STATEMENT

As stated in the order to show cause (Dkt. No. 2), petitioner Marjorie Knoller's habeas corpus petition includes the following three constitutional claims: (1) that the state courts unreasonably denied petitioner's claim that the trial court's gag orders and threats to expel her counsel from the courtroom during the prosecutor's rebuttal closing argument was a per se prejudicial violation of her constitutional right to the assistance of counsel; (2) that the state courts unreasonably denied her claim that the trial court's admission against petitioner of the incriminating letters of her non-testifying co-defendant constituted a prejudicial violation of her

1 constitutional right to confrontation and to a fair trial; and (3) that the cumulative impact of the
2 foregoing constitutional errors was prejudicial to a degree that warrants habeas relief.

3 In March 2002, petitioner was convicted of second degree murder, involuntary
4 manslaughter, and ownership of a mischievous animal causing death. Petitioner’s motion for a
5 new trial was granted on the second degree murder charge, but denied as to the other two
6 convictions. On appeal, the California Court of Appeal reversed the order granting a new trial
7 on the murder conviction and affirmed the judgment on the other two convictions. Petitioner
8 then filed a petition for review with the California Supreme Court in June 2005. Petitioner
9 states, and respondent does not contest, that petitioner presented her federal constitutional
10 claims, including her claim for cumulative error, in both her appeal and her subsequent petition
11 for review to the California Supreme Court. The California Supreme Court granted limited
12 review of the order granting a new trial on the murder charge.

13 On remand, the trial court reinstated the murder conviction and sentenced petitioner to 15
14 years to life in prison. Petitioner appealed the conviction, again arguing her federal
15 constitutional claims, including cumulative error. After the California Court of Appeal affirmed
16 the trial court’s judgment, petitioner filed a second petition for review in the California Supreme
17 Court in October 2010. Respondent moves to dismiss the petition on the ground that petitioner
18 has not exhausted her claim for cumulative error because she failed to present the claim to the
19 California Supreme Court in her second petition for review.

20 **ANALYSIS**

21 **1. STANDARD OF REVIEW.**

22 An application for a federal writ of habeas corpus filed by a prisoner who is in state
23 custody pursuant to a judgment of a state court may not be granted unless the prisoner has first
24 exhausted state judicial remedies, either by way of a direct appeal or in collateral proceedings,
25 by presenting the highest state court available with a fair opportunity to rule on the merits of
26 each and every issue he or she seeks to raise in federal court. *See* 28 U.S.C. 2254(b),(c);
27 *Granberry v. Greer*, 481 U.S. 129, 133–34 (1987). “[S]tate prisoners must give the state courts
28 one full opportunity to resolve any constitutional issues by invoking one complete round of the

1 State’s established appellate review process.” *O’Sullivan v. Boerckel*, 526 U.S. 838, 845 (1999).
2 Exhaustion, however, does not require repeated assertions if a federal claim is actually
3 considered at least once on the merits by the state’s highest court. *Greene v. Lambert*, 288 F.3d
4 1081, 1086 (9th Cir. 2002) (citing *Castille v. Peoples*, 489 U.S. 346, 350 (1989)).

5 2. EXHAUSTION.

6 Respondent concedes that petitioner raised her claim of cumulative error in her first
7 petition for review to the California Supreme Court in 2005. That court granted limited review
8 as to two other claims and is thus presumed to have reviewed and denied the cumulative error
9 claim on the merits. *See Ylst v. Nunnemaker*, 501 U.S. 797, 803 (1991). As stated in its brief,
10 respondent agrees that this decision “normally . . . would constitute an implicit denial of the
11 cumulative error claim, and would be sufficient to comply with the exhaustion requirement”
12 (Reply Br. 2). Respondent argues, however, that because petitioner again raised the cumulative
13 error issue in her second appearance before the Court of Appeal but failed to include it in her
14 second petition to the California Supreme Court, the claim was not “fully resolved” and
15 petitioner has not completed “one complete round” of the state appellate process.

16 Respondent has cited no decision that supports an interpretation of the exhaustion
17 doctrine as requiring that a petitioner present her claim to the state’s highest court multiple
18 times, even after that court has passed on the merits of the claim. Here, the state supreme court
19 was presented with and did adjudicate the merits of petitioner’s federal constitutional claim.
20 Petitioner’s claim has accordingly been exhausted for purposes of filing the instant habeas
21 petition in federal court. Whether petitioner continued to argue a claim of cumulative error in
22 subsequent proceedings in the Court of Appeal does not affect the exhaustion analysis. Indeed,
23 that court explicitly declined to revisit petitioner’s constitutional claims as outside the scope of
24 its limited review, stating that its “initial opinion remains determinative as to all of the issues it
25 decided that were not addressed by the Supreme Court.” *People v. Knoller*, No. A123272, 2010
26 WL 3280200, at *49 (Cal. Ct. App. Aug. 20, 2010). Petitioner is not required to present her
27 federal constitutional claim to the state supreme court a second time under these circumstances.
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CONCLUSION


For the reasons stated above, the Court finds that petitioner has fulfilled the exhaustion requirement with respect to the challenged claim. Accordingly, respondent's motion to dismiss is **DENIED** and the hearing set for August 30 is hereby **VACATED**.

RESPONDENT SHALL FILE WITH THE COURT AND SERVE ON PETITIONER AN ANSWER WITHIN SIXTY DAYS OF THE ISSUANCE OF THIS ORDER SHOWING CAUSE WHY A WRIT OF HABEAS CORPUS SHOULD NOT BE GRANTED.

If petitioner wishes to respond to the answer, he shall do so by **FILING A TRAVERSE WITH THE COURT AND SERVING IT ON RESPONDENT WITHIN THIRTY DAYS OF THE DATE THE ANSWER IS FILED.**

IT IS SO ORDERED.

Dated: August 22, 2012.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE