

1
2
3
4
5
6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE NORTHERN DISTRICT OF CALIFORNIA
8

9 CLIFFORD E. ADAMS, AE8144,)
10 Petitioner,) No. C 12-6238 CRB (PR)
11 vs.) ORDER OF DISMISSAL
12 GARY SWARTHOUT, Warden,) (Docket # 2)
13 Respondent.)
14

15 Petitioner, a state prisoner currently incarcerated at California State
16 Prison, Solano, seeks a writ of habeas corpus under 28 U.S.C. § 2254 challenging
17 a conviction from the San Mateo County Superior Court. He also seeks leave to
18 proceed in forma pauperis under 28 U.S.C. § 1915.

19 Prisoners in state custody who wish to challenge collaterally in federal
20 habeas corpus proceedings either the fact or length of their confinement are first
21 required to exhaust state judicial remedies, either on direct appeal or through
22 collateral proceedings, by presenting the highest state court available with a fair
23 opportunity to rule on the merits of each and every claim they seek to raise in
24 federal court. See 28 U.S.C. § 2254(b)-(c). Petitioner has not done so. He has
25 not presented the Supreme Court of California with an opportunity to consider
26 and rule on his federal claims. See O’Sullivan v. Boerckel, 526 U.S. 838, 845
27 (1999) (state’s highest court must be given opportunity to rule on claims even if
28 review is discretionary); Larche v. Simons, 53 F.3d 1068, 1071-72 (9th Cir.

1 1995) (Supreme Court of California must be given at least one opportunity to
2 review state prisoners' federal claims).

3 The petition for a writ of habeas corpus under § 2254 is DISMISSED
4 without prejudice to refile after state judicial remedies are exhausted. But
5 based solely on his affidavit of poverty, petitioner's request (docket # 2) to
6 proceed in forma pauperis under § 1915 is granted.

7 The clerk is instructed to enter judgment in accordance with this order and
8 close the file.

9 SO ORDERED.

10 DATED: April 18, 2013

11 
12 _____
13 CHARLES R. BREYER
14 United States District Judge