

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

E-Filed 3/1/16

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

CHARLES ANTHONY BROOKS,

No. C 15-4877 RS (PR)

Petitioner,

**ORDER TO SHOW CAUSE BY APRIL
11, 2016 WHY THE PETITION
SHOULD NOT BE DISMISSED**

v.

SAN MATEO SUPERIOR COURT,

Respondent.

_____ /

On or before April 11, 2016, petitioner must show cause why this federal habeas action should not be dismissed for failing to exhaust his claims before filing suit. If he fails to do so, the action will be dismissed under Federal Rule of Civil Procedure 41(b) for failure to prosecute.

Prisoners in state custody who wish to challenge collaterally in federal habeas 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); *Rose v. Lundy*, 455 U.S. 509, 515–16 (1982). In fact, a federal district court may not grant the writ unless

No. C 15-4877 RS (PR)
ORDER TO SHOW CAUSE

United States District Court
For the Northern District of California

1 state court remedies are exhausted or there is either “an absence of available state corrective
2 process” or such process has been “rendered ineffective.” *See* 28 U.S.C. § 2254(b)(1)(A)–
3 (B). If available state remedies have not been exhausted as to all claims, the district court
4 must dismiss the petition. *See Lundy*, 455 U.S. at 510.


5 Petitioner seeks federal habeas relief from his state convictions. According to the
6 petition, he has pending state habeas petitions challenging the same convictions as issue here,
7 however. (Pet. at 3–4.) Because his habeas claims are pending in state court, they are
8 unexhausted and therefore are subject to dismissal. *Lundy*, 455 U.S. at 510.

9 Petitioner may avoid dismissal if he can show that he is entitled to a stay of the action.
10 Prisoners who may run the risk of having the federal statute of limitations expire while they
11 are exhausting their state remedies may avoid this predicament “by filing a ‘protective’
12 petition in federal court and asking the federal court to stay and abey the federal habeas
13 proceedings until state remedies are exhausted.” *Pace v. DiGuglielmo*, 544 U.S. 408, 416
14 (2005) (citing *Rhines v. Webber*, 544 U.S. 269, 277–78 (2005)). A federal court may stay a
15 petition that raises only unexhausted claims. *Mena v. Long*, No. 14-55102, 2016 WL
16 62540516, *1 (9th Cir. Feb. 17, 2016). A stay is “appropriate when the district court
17 determines there was good cause for the petitioner’s failure to exhaust his claims first in state
18 court,” the claims are not meritless, and there are no intentionally dilatory litigation tactics by
19 the petitioner. *Rhines*, 544 U.S. at 277–78.

20 The Court notes petitioner has provided updated information on his ability to pay the
21 filing fee, which the Court construes as a renewed motion to proceed *in forma pauperis*
22 (“IFP”). Because this new information shows that petitioner lacks the current ability to pay
23 the filing fee, his motion to proceed IFP is GRANTED.

24 **IT IS SO ORDERED.**

25 DATED: March 1, 2016


RICHARD SEEBORG
United States District Judge