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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JAMES GEORGE STAMOS, Jr.,
Petitioner,
v.
DAVID DAVEY,
Respondent.

Case No. [16-cv-4860-TEH](#)

ORDER GRANTING MOTION TO
DISMISS AND DENYING
CERTIFICATE OF APPEALABILITY

Dkt. Nos. 12, 19

Petitioner, James George Stamos Jr., a state prisoner, proceeds with a pro se Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2254 challenging a prison disciplinary decision that resulted in the loss of credits. Respondent has filed a motion to dismiss on the grounds that the petition is unexhausted and procedurally barred. Petitioner has filed an opposition. For the reasons set forth below, the Court GRANTS the motion.

I

Petitioner is serving a seven-year prison term. Petition at 2. On March 1, 2015, Petitioner was found guilty at a prison disciplinary hearing and was assessed a 150-day time-credit forfeiture. Id. at 6.

II

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

1 judicial remedies, either on direct appeal or through collateral
2 proceedings, by presenting the highest state court available with
3 a fair opportunity to rule on the merits of each and every claim
4 they seek to raise in federal court. See 28 U.S.C. § 2254(b),
5 (c); Rose v. Lundy, 455 U.S. 509, 515-16 (1982).

6 In this case, the California Supreme Court denied
7 Petitioner's petition with a citation to In re Dexter, 25 Cal.3d
8 921, 925-26 (1979). Motion to Dismiss ("MTD"), Ex. 5. In In re
9 Dexter, the California Supreme Court held that the court will not
10 afford a prisoner judicial relief unless he has first exhausted
11 available administrative remedies. 25 Cal.3d at 925. The
12 California Supreme Court's citation to In re Dexter demonstrates
13 that the court did not reach the merits of Petitioner's claims
14 because he failed to exhaust his available administrative
15 remedies. See Harris v. Super. Ct., 500 F.2d 1124, 1128 (9th
16 Cir. 1974) (en banc) ("If the denial of the habeas corpus
17 petition includes a citation of an authority which indicates that
18 the petition was procedurally deficient or if the California
19 Supreme Court so states explicitly, then the available state
20 remedies have not been exhausted as the California Supreme Court
21 has not been given the required fair opportunity to correct the
22 constitutional violation.").

23 District courts in California have consistently held that if
24 the California Supreme Court denies a petition with a citation to
25 In re Dexter, the prisoner has not exhausted state court remedies
26 as required. See, e.g., Riley v. Grounds, No. C-13-2524 TEH
27 (PR), 2014 WL 988986 at *4 (N.D. Cal. Mar. 10, 2014) (granting
28 motion to dismiss petition as unexhausted in light of California

1 Supreme Court's summary denial with a citation to In re Dexter);
2 Turner v. Director of CDC, No. 1:14-cv-00392 LJO JLT, 2014 WL
3 4458885 at *3 n.2 (E.D. Cal. Sept. 10, 2014) ("[F]or exhaustion
4 purposes, the citation to Dexter alone is sufficient, without the
5 need to review the state petition, to establish that the claims
6 in the first amended petition were never considered on their
7 merits by the state court and, thus, were not 'fairly presented'
8 within the meaning of AEDPA."); Dean v. Diaz, No. 1:14-cv-00209
9 SKO HC, 2014 WL 1275706 at *5 (E.D. Cal. Mar. 26, 2014) ("This
10 court has regularly relied on a citation to Dexter to find that a
11 federal petition is unexhausted.").

12 Petitioner retained the ability to refile his state habeas
13 petition after exhausting his claims through the administrative
14 procedure but he filed this federal petition instead. In light
15 of the California Supreme Court's citation to In re Dexter, the
16 Court finds that Petitioner has not exhausted his claims.

17 III

18 A federal court will not review questions of federal law
19 decided by a state court if the decision also rests on a state
20 law ground that is independent of the federal question and
21 adequate to support the judgment. Coleman v. Thompson, 501 U.S.
22 722, 729-30 (1991). In the context of direct review by the
23 United States Supreme Court, the "independent and adequate state
24 ground" doctrine goes to jurisdiction; in federal habeas cases,
25 in whatever court, it is a matter of comity and federalism. Id.

26 In cases in which a state prisoner has defaulted his federal
27 claims in state court pursuant to an independent and adequate
28 state procedural rule, federal habeas review of the claims is

1 barred unless the prisoner can demonstrate cause for the default
2 and actual prejudice as a result of the alleged violation of
3 federal law, or demonstrate that failure to consider the claims
4 will result in a fundamental miscarriage of justice. Coleman,
5 501 U.S. at 750. Where petitioner's claims were not fairly
6 presented to the state courts, but an independent and adequate
7 state procedural rule exists which bars their review, claims are
8 procedurally barred in federal habeas review. Casey v. Moore,
9 386 F.3d 896, 919 (9th Cir. 2004) (finding that Washington's
10 state procedural rule setting one-year limit on a personal
11 restraint petition which raises a federal claim not raised on
12 direct review precludes federal review of claim that would no
13 longer be timely under that rule).

14 California's administrative exhaustion rule is based solely
15 on state law and is therefore independent of federal law. See
16 Carter v. Giurbino, 385 F.3d 1194, 1197-98 (9th Cir. 2004) ("A
17 state ground is independent only if it is not interwoven with
18 federal law."); see also Cal. Code Regs. tit. 15, § 3084.1(a)
19 (prisoners may appeal "any policy, decision, action, condition,
20 or omission by the department or its staff that the inmate or
21 parolee can demonstrate as having a material adverse effect upon
22 his or her health, safety, or welfare"). California's
23 administrative exhaustion rule has also been firmly established
24 and has been regularly followed since 1941 and is therefore
25 adequate to support a judgment. See Abelleira v. Dist. Ct. of
26 App., 17 Cal.2d 280, 292 (1941) ("the rule is that where an
27 administrative remedy is provided by statute, relief must be
28 sought from the administrative body and this remedy exhausted

1 before the courts will act."); In re Muszalski, 52 Cal. App. 3d
2 500, 503 (1975) ("It is well settled as a general proposition
3 that a litigant will not be afforded relief in the courts unless
4 and until he has exhausted available administrative remedies.");
5 see also Drake v. Adams, No. 2:07-cv-00577 JKS, 2009 WL 2474826
6 at *2 (E.D. Cal. Aug. 11, 2009) ("In reviewing California cases
7 in which the issue of exhaustion was decided during the past 10
8 years, the Court was unable to find a single case in which a
9 California appellate court did not deny a petition for failure to
10 exhaust administrative remedies. Thus, this doctrine appears to
11 be well established and consistently applied.").

12 Federal courts in California have repeatedly held that if
13 the California Supreme Court denies a petition with a citation to
14 In re Dexter federal habeas review is procedurally barred because
15 California's administrative exhaustion rule is both independent
16 of federal law and adequate to support the state court judgment.
17 See Bartholomew v. Haviland, 467 F. App'x 729, 730-31 (9th Cir.
18 2012) (petition was procedurally barred for failure to exhaust
19 prison appeals process); see also Riley, 2014 WL 988986 at *4
20 (granting motion to dismiss petition as procedurally barred in
21 light of California Supreme Court summary denial with a citation
22 to In re Dexter); Turner, 2013 WL 4458885 at *6 (petitioner's
23 remaining claims procedurally barred pursuant to California
24 Supreme Court's citation to In re Dexter); Yeh v. Hamilton, No.
25 1:13-cv-00335 AWI GSA HC, 2013 WL 3773869 at *2-3 (E.D. Cal. July
26 17, 2013) (petitioner's claims procedurally barred after
27 California Supreme Court denied state petition with citation to
28 In re Dexter); Foster v. Cate, No. 1:12-cv-01539 AWI BAM HC, 2013

1 WL 1499481 at *3-4 (E.D. Cal. Apr. 11, 2013) (California Supreme
2 Court's citation to In re Dexter is both independent and adequate
3 and therefore respondent is correct that federal habeas review is
4 procedurally barred).

5 Petitioner has not alleged any facts to cast doubt on the
6 adequacy or consistent application of California's administrative
7 exhaustion rule. See Bennett v. Mueller, 322 F.3d 573, 586 (9th
8 Cir. 2003). The Court agrees with decisions cited above, and
9 finds that Petitioner's claims are procedurally defaulted.

10 As noted above, the Court may still consider Petitioner's
11 claims if he demonstrates: (1) cause for the default and actual
12 prejudice resulting from the alleged violation of federal law, or
13 (2) a fundamental miscarriage of justice. Coleman, 501 U.S. at
14 750. The existence of cause for a procedural default must
15 ordinarily turn on whether the prisoner can show that some
16 objective factor external to the defense impeded counsel's
17 efforts to comply with the State's procedural rule. McCleskey v.
18 Zant, 499 U.S. 467, 493-94 (1991). Examples of cause include
19 showings "that the factual or legal basis for a claim was not
20 reasonably available to counsel," "that some interference by
21 officials made compliance impracticable," or "of ineffective
22 assistance of counsel." Murray v. Carrier, 477 U.S. 478, 488
23 (1986). Prejudice is difficult to demonstrate:

24 The showing of prejudice required under
25 Wainwright v. Sykes [433 U.S. 72 (1977)] is
26 significantly greater than that necessary
27 under "the more vague inquiry suggested by
28 the words 'plain error.'" Engle [v. Isaac],
456 U.S., at 135, 102 S.Ct., at 1575; [United
States v.] Frady, supra, 456 U.S., at 166, 102
S.Ct., at 1593. See also Henderson v. Kibbe,
431 U.S. 145, 154, 97 S.Ct. 1730, 1736, 52

1 L.Ed.2d 203 (1977). The habeas petitioner
2 must show "not merely that the errors at . .
3 . trial created a possibility of prejudice,
4 but that they worked to his actual and
substantial disadvantage, infecting his
entire trial with error of constitutional
dimensions." Frady, supra, at 170, 102
S.Ct., at 1596.

5 Id. at 493-494 (omission in original).

6 Petitioner argues in his opposition that prison officials
7 interfered with his ability to properly exhaust his
8 administrative remedies. Even assuming that Petitioner can show
9 cause, he has failed to demonstrate or even argue prejudice. Nor
10 does a review of the petition or exhibits for the various filings
11 demonstrate prejudice that would meet the high standard described
12 above. For these same reasons, Petitioner has also failed to
13 show a fundamental miscarriage of justice. For all these
14 reasons, the claims are procedurally barred and the Court cannot
15 consider the petition.

16 IV

17 For the foregoing reasons and for good cause shown,

18 1. Respondent's motion to dismiss (Docket No. 12) is
19 GRANTED and the petition is DISMISSED.

20 2. Petitioner's request for accommodations (Docket No. 19)
21 is DENIED. Petitioner may file a civil rights action if he seeks
22 relief.

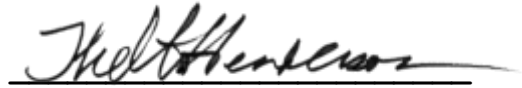
23 3. Petitioner has failed to make a substantial showing that
24 a reasonable jurist would find this Court's denial of his claims
25 debatable or wrong. Slack v. McDaniel, 529 U.S. 473, 484 (2000).
26 Consequently, no certificate of appealability is warranted in
27 this case.
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4. The Clerk is directed to enter Judgment in favor of Respondent and against Petitioner and close the file.

IT IS SO ORDERED.

Dated:1/31/2017



THELTON E. HENDERSON
United States District Judge

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