

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

3 STEPHEN LIEBB,

No. C 07-05577 CW (PR)

4 Petitioner,

ORDER DISMISSING PETITION WITH
LEAVE TO AMEND

5 v.

6 R. AYERS, Jr., Warden,

7 Respondent.
8 _____/

9 Petitioner, a state prisoner, filed this pro se petition for
10 writ of habeas corpus pursuant to 28 U.S.C. § 2254 challenging the
11 Board of Parole Hearings' refusal to set a parole date at his fourth
12 parole suitability hearing on July 27, 2006. It appears that
13 Petitioner may not have exhausted his state remedies before filing
14 the petition relating to his July 27, 2006 parole suitability
15 hearing. (Pet. at 4-7.)

16 Prisoners in state custody who wish to challenge in federal
17 habeas proceedings either the fact or length of their confinement
18 are first required to exhaust state judicial remedies by presenting
19 the highest state court available with a fair opportunity to rule
20 on the merits of each and every claim they seek to raise in federal
21 court. See 28 U.S.C. § 2254(b),(c); Rose v. Lundy, 455 U.S. 509,
22 515-16 (1982). If available state remedies have not been exhausted
23 as to all claims, the district court must dismiss the petition.
24 Id. at 510; Guizar v. Estelle, 843 F.2d 371, 372 (9th Cir. 1988).
25 A dismissal solely for failure to exhaust is not a bar to returning
26 to federal court after exhausting available state remedies. See
27 Trimble v. City of Santa Rosa, 49 F.3d 583, 586 (9th Cir. 1995).
28

1 The petition is DISMISSED WITH LEAVE TO AMEND to allege that
2 Petitioner has exhausted his available state judicial remedies.

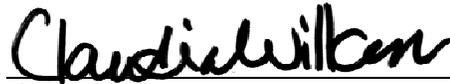
3 If the petition is unexhausted, it must be dismissed in its
4 entirety without prejudice to Petitioner returning to state court
5 to exhaust his state remedies and then filing a new federal habeas
6 corpus petition. Should he do so, he is advised to file his new
7 federal habeas corpus petition as soon as possible after his state
8 court proceedings have concluded. The Court makes no ruling at
9 this time on the issue of the timeliness of any future federal
10 petition.

11 CONCLUSION

12 For the foregoing reasons, the petition is DISMISSED WITH
13 LEAVE TO AMEND. Within thirty (30) days of the date of this Order,
14 Petitioner shall file an amended petition alleging that he has
15 exhausted his state judicial remedies and attach copies of the
16 orders denying his state habeas petitions. If no amended petition
17 is filed, this petition will be dismissed without prejudice for
18 failure to exhaust.

19 IT IS SO ORDERED.

20 DATED: 2/5/08



21 CLAUDIA WILKEN
22 United States District Judge

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA
4

5
6 STEPHEN LIEBB,

Case Number: CV07-05577 CW

7 Plaintiff,

CERTIFICATE OF SERVICE

8 v.

9 R AYERS JR et al,

10 Defendant.
11 _____/

12 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
13 Court, Northern District of California.

14 That on February 5, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said
15 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
16 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
17 located in the Clerk's office.

18 Denise Alayne Yates
19 Office of the Attorney General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004

20 Stephen Lieb
21 Reg. No. C-60825
San Quentin State Prison
San Quentin, CA 94974

22 Dated: February 5, 2008

23 Richard W. Wieking, Clerk
24 By: Sheilah Cahill, Deputy Clerk
25
26
27