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28IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DARRELL JOHNSON,

Petitioner,

v.

MICHAEL MARTELL, Acting Warden,

Respondent.

No. C 09-0409 CW

ORDER GRANTING  
RESPONDENT'S  
MOTION TO DISMISS  
(Docket No. 14)

On January 29, 2009, Petitioner Darrell Johnson, a state prisoner incarcerated at Mule Creek State Prison, filed this pro se petition for a writ of habeas corpus pursuant to Title 28 U.S.C. § 2254. Respondent moves to dismiss the petition based on failure to exhaust any of the claims. Petitioner filed an opposition, consisting of a hand-written letter with several attachments. Respondent has not filed a reply. Having considered all the papers filed by the parties, the Court GRANTS Respondent's motion to dismiss.

BACKGROUND

On October 25, 2006, Petitioner was sentenced to seventeen years in state prison for forcible rape. (Pet. at 2.) In his direct appeal to the California court of appeal, Petitioner argued that the trial court: 1) violated his federal due process rights by admitting K. Doe's testimony about Petitioner's prior sexual assault and by permitting the use of a victim support person during the victim's testimony; and 2) violated California law by admitting the victim's 911 call to the police as a spontaneous statement and by admitting expert testimony on rape trauma syndrome. (Resp.'s Ex. A, Ct. of Appeal decision.)

The court of appeal affirmed the conviction, and Petitioner sought review in the California Supreme Court, where he claimed that the trial court: 1) violated his federal due process rights by admitting K. Doe's testimony about a prior sexual assault committed by Petitioner; and 2) violated California law by admitting expert testimony on rape trauma syndrome. (Resp.'s Ex. A, Petition for Review.) The California Supreme Court denied review on January 14, 2009. (Pet. at 5.)

LEGAL STANDARD

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. 28 U.S.C. § 2254 (b), (c). Granberry

1 v. Greer, 481 U.S. 129, 133-34 (1987); Rose v. Lundy, 455 U.S. 509,  
2 515 (1982).

3 The exhaustion-of-state-remedies doctrine reflects a policy of  
4 federal-state comity "to give the state the initial 'opportunity to  
5 pass upon and correct' alleged violations of its prisoners' federal  
6 rights." Picard v. Connor, 404 U.S. 270, 275 (1971)(citations  
7 omitted). The exhaustion requirement is satisfied only if the  
8 federal claim has been "fairly presented" to the state courts.  
9 Id.; Peterson v. Lampert, 319 F.3d 1153, 1155 (9th Cir. 2003)(en  
10 banc). A federal district court must dismiss a federal petition  
11 containing any claim as to which state remedies have not been  
12 exhausted. Rhines v. Webber, 544 U.S. 269, 273-74 (2005).

13 For purposes of exhaustion, pro se petitions may, and  
14 sometimes should, be read differently from counseled petitions.  
15 Sandqathe v. Maass, 314 F.3d 371, 378 (9th Cir. 2002) (neither  
16 confused arguments nor poor lawyering will necessarily defeat a pro  
17 se petitioner's otherwise adequate efforts to assert a federal  
18 claim in state court); Peterson v. Lampert, 319 F.3d 1153, 1159  
19 (9th Cir. 2003) (en banc) ("[T]he complete exhaustion rule is not  
20 to trap the unwary pro se prisoner.").

21 DISCUSSION

22 I. Exhaustion

23 Respondent moves to dismiss the petition on the ground that  
24 all the claims raised are unexhausted. The petition contains the  
25 following claims: 1) ineffective assistance of counsel in violation  
26 of the Sixth Amendment for failing to object to juror misconduct  
27 involving the use of a laptop computer; 2) prosecutorial misconduct

1 in violation of the Fourteenth Amendment, based on the presentation  
2 of false testimony and the use of a photograph taken five hours  
3 after the police first arrived on the scene; 3) improper admission  
4 of hearsay in violation of California Evidence Code section 1240 by  
5 the admission of the victim's 911 call to police; and 4) improper  
6 admission of perjured testimony of K. Doe in violation of the  
7 Fourteenth Amendment.

8 As mentioned previously, Petitioner only raised two claims  
9 before the California Supreme Court: 1) that the trial court erred  
10 in admitting testimony about a prior sexual assault; and 2) that  
11 the trial court erred in admitting prejudicial rape trauma syndrome  
12 evidence. Neither of these claims are in the federal habeas  
13 petition. Thus, only unexhausted claims are raised in the federal  
14 habeas petition.

15 Accordingly, the Court GRANTS Respondent's motion to dismiss.

16 II. Certificate of Appealability

17 The federal rules governing habeas cases brought by state  
18 prisoners have recently been amended to require a district court  
19 that dismisses or denies a habeas petition to grant or deny a  
20 certificate of appealability in its ruling. See Rule 11(a), Rules  
21 Governing § 2254 Cases, 28 U.S.C. foll. § 2254 (effective December  
22 1, 2009).

23 For the reasons stated above, Petitioner has not shown "that  
24 jurists of reason would find it debatable whether the district  
25 court was correct in its procedural ruling." Slack v. McDaniel,  
26 529 U.S. 473, 484 (2000). Accordingly, a certificate of  
27 appealability is DENIED.

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CONCLUSION

The instant action must be dismissed because none of  
Petitioner's claims in his federal habeas petition have been  
exhausted in state court. The Court GRANTS Respondent's motion to  
dismiss (Docket No. 14) and DENIES a certificate of appealability.

IT IS SO ORDERED



Dated September 20, 2010

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CLAUDIA WILKEN  
United States District Judge

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

5  
6 DARRELL JOHNSON,  
7 Plaintiff,

Case Number: CV09-00409 CW

**CERTIFICATE OF SERVICE**

8 v.

9 MICHAEL MARTEL, Acting Warden, et al,  
10 Defendants.  
11 \_\_\_\_\_/

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

13 That on September 20, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said  
14 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said  
15 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located  
in the Clerk's office.

16  
17 Darrell Johnson F49735  
18 C-14-217- Up  
Mule Creek State Prison  
19 P.O. Box 409060  
Ione, CA 95640

20 Dated: September 20, 2010

21 Richard W. Wieking, Clerk  
By: Ronnie Hersler, Adm. Law Clerk  
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