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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

TONY RAY LEWIS, JR.,
Petitioner,
vs.
TIM VIRGA, Warden,
Respondent.

No. C 10-4649 PJH (PR)
**ORDER FOR PETITIONER TO
SHOW CAUSE**

This is a habeas case filed pro se by a state prisoner. The court noted in its initial review order: "Petitioner alleges in the petition that although he appealed his conviction, the issues he presents here are not those that were raised on direct appeal. He also has checked the 'no' box to the question in the form petition whether he has 'previously filed any petitions, application or motions with respect to this conviction in any court, state or federal,' and says that he does not now have any postconviction actions pending. In short, he has not pleaded exhaustion, but rather the absence of it." The petition was dismissed with leave to amend to allege exhaustion.

Petitioner raises four issues in the amended petition and states that they are not those he raised on direct appeal. He also has written "N/A" in response to questions about whether he has sought relief in "any proceeding other than an appeal." These answers mean that he has not presented his claims to the highest state court available, the California Supreme Court, something that is usually done by way of state petitions for habeas corpus if the issues were not raised on direct appeal. On the other hand, in response to an instruction that says "[i]f any of these grounds [claims for relief in this court] was not previously presented to any other court, state briefly which grounds were not

United States District Court
For the Northern District of California

1 presented and why,” he has written “N/A.” This suggests that he *has* presented the current
2 federal claims in state court, contradicting the other answers.

3 Petitioner has still not successfully pleaded exhaustion, which is his burden. See
4 *Cartwright v. Cupp*, 650 F.2d 1103, 1104 (9th Cir. 1981). He therefore is ordered to show
5 cause why this case should not be dismissed for failure to exhaust. To do so, he should file
6 a paper saying how he presented the four issues in the amended to complaint to the state
7 courts, including the California Supreme Court. He must do this within thirty days of the
8 date this order is entered. If he does not respond or if the response does not show that he
9 presented his issues in state court, this case will be dismissed without prejudice for failure
10 to exhaust.

11 **IT IS SO ORDERED.**

12 Dated: December 8, 2011.



PHYLLIS J. HAMILTON
United States District Judge