

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

4
5 ALVIN MOORE,

No. C 10-05626 SBA (PR)

6 Petitioner,

**ORDER OF DISMISSAL WITH LEAVE
TO AMEND**

7 v.

8 RANDY GROUNDS, Warden,

9 Respondent.

10
11 Petitioner, a state prisoner, filed this pro se petition for writ of habeas corpus pursuant to 28
12 U.S.C. § 2254. He has paid the \$5.00 filing fee. The California Supreme Court's official website
13 shows that at the time he filed this petition, he had a habeas action pending in state court. See
14 Moore (Alvin) on H.C., Cal. S. Ct. No. S187853. Petitioner's state habeas petition was filed on
15 November 2, 2010, and there has not been any final decision from the California Supreme Court.
16 See id.

17 Prisoners in state custody who wish to challenge in federal habeas proceedings either the fact
18 or length of their confinement are first required to exhaust state judicial remedies by presenting the
19 highest state court available with a fair opportunity to rule on the merits of each and every claim
20 they seek to raise in federal court. See 28 U.S.C. § 2254(b), (c); Rose v. Lundy, 455 U.S. 509, 515-
21 16 (1982). The exhaustion requirement is not satisfied if there is a challenge to the fact or length of
22 confinement pending in state court. See Sherwood v. Tomkins, 716 F.2d 632, 634 (9th Cir. 1983).
23 If available state remedies have not been exhausted as to all claims, the district court must dismiss
24 the petition. Id. at 510; Guizar v. Estelle, 843 F.2d 371, 372 (9th Cir. 1988). A dismissal solely for
25 failure to exhaust is not a bar to returning to federal court after exhausting available state remedies.
26 See Trimble v. City of Santa Rosa, 49 F.3d 583, 586 (9th Cir. 1995).

27 Because Petitioner has a habeas petition still pending before state court, his present petition
28 appears to be unexhausted for purposes of federal habeas corpus review. Moreover, it is unclear to
this Court whether Petitioner is seeking federal habeas corpus relief based on other grounds for relief

1 different from those currently pending before state court. Accordingly, the petition must be
2 DISMISSED. However, Petitioner may file an amended petition which clarifies the nature and
3 exhaustion status of all claims which he seeks to raise in his federal petition. If Petitioner seeks to
4 add newly exhausted claims to his petition he shall include those in the amended petition as well.
5 Petitioner shall use the form provided with this Order to file his amended petition.

6 **CONCLUSION**

7 For the foregoing reasons, the petition is DISMISSED with leave to amend. Petitioner may
8 file an amended petition, as set forth above, within **thirty (30) days** of the date of this Order. He
9 must use the enclosed habeas corpus form, completed in full, including the state post-conviction
10 relief he has sought. He must clearly state his federal grounds for relief and whether he is
11 challenging his criminal conviction and sentence or the execution of his sentence. The amended
12 pleading must be simple and concise. Finally, he must write the correct caption and case number for
13 this action -- Case No. C 10-5626 SBA (PR) -- on the form, and clearly label it "Amended Petition."

14 Failure to file an amended petition within the thirty-day deadline shall result in dismissal of
15 this action without prejudice.

16 The Clerk of the Court shall send Petitioner a blank federal habeas petition form along with
17 his copy of this Order.

18 IT IS SO ORDERED.

19 DATED: 1/14/11


SAUNDRA BROWN ARMSTRONG
United States District Judge

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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

ALVIN MOORE,

Plaintiff,

v.

R ROUNDS et al,

Defendant.

Case Number: CV10-05626 SBA

CERTIFICATE OF SERVICE

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

That on January 18, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Alvin Moore C-29885
Correctional Training Facility - Central
P.O. Box 689
Soledad, CA 93960

Dated: January 18, 2011

Richard W. Wiekling, Clerk
By: LISA R CLARK, Deputy Clerk