

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

3
4 PAUL SAMUEL JOHNSON,

No. C 11-6688 CW (PR)

5 Petitioner,

ORDER DENYING MOTION TO
DISMISS AND DIRECTING
PETITIONER TO COMPLY
WITH COURT ORDER OR
FACE DISMISSAL FOR
FAILURE TO PROSECUTE

6 v.

7 STEVE FREITAS, SONOMA COUNTY
8 SHERIFF,

9 Respondent.
10 _____/

11 Petitioner Paul Samuel Johnson filed this pro se petition for
12 a writ of habeas corpus when he was incarcerated. On August 7,
13 2012, the Court directed Respondent to answer the petition. On
14 October 19, 2012, Petitioner notified the Court (in one of his
15 other then-pending actions) that he was being released from
16 custody and provided a new mailing address. On December 19, 2012,
17 Respondent filed a motion to dismiss the petition as untimely and
18 served it on Petitioner at his new mailing address. Petitioner
19 has not opposed the motion or otherwise communicated with the
20 Court in this case since September 26, 2012.

21 BACKGROUND

22 In 2009, Petitioner was convicted by a jury in Sonoma County
23 Superior Court of threatening a public official. He was sentenced
24 to three years in state prison. Resp't Mot. Dismiss, Ex. A at 1.

25 The conviction was affirmed by the California Court of Appeal
26 on November 18, 2010. Id. The California Supreme Court denied
27 review on January 26, 2011. Id. Exs. B & C.

28 Thereafter, Petitioner filed seven habeas corpus petitions in

1 the California Supreme Court, all of which were denied. See id.
2 Exs. D-Q. He filed the present petition on December 8, 2011.

3 DISCUSSION

4 A. Legal Standard

5 Prisoners in state custody who wish to challenge collaterally
6 in federal habeas proceedings either the fact or length of their
7 confinement are first required to exhaust state judicial remedies,
8 either on direct appeal or through collateral proceedings, by
9 presenting the highest state court available with a fair
10 opportunity to rule on the merits of each and every claim they
11 seek to raise in federal court. 28 U.S.C. § 2254 (b), (c); Rose
12 v. Lundy, 455 U.S. 509, 515 (1982). A federal district court must
13 dismiss a petition containing any claim as to which state remedies
14 have not been exhausted. Rhines v. Webber, 544 U.S. 269, 273-74
15 (2005).

16 B. Analysis

17 Petitioner raises three claims in the present petition:
18 (1) the evidence presented at trial was insufficient to support
19 the conviction; (2) the trial court erroneously admitted evidence
20 of prior uncharged bad acts; and (3) the trial court erred by not
21 granting his motion to dismiss the information under California
22 Penal Code section 995.

23 Respondent argues the petition must be dismissed as
24 unexhausted because Petitioner did not present his third claim to
25 the California Supreme Court. The Court, having reviewed the
26 exhibits submitted by Respondent in support of the present motion,
27 agrees the claim is unexhausted. Dismissal of the petition as
28 unexhausted is not warranted, however, because the claim is

1 subject to dismissal for failure to state a cognizable ground for
2 federal habeas corpus relief.

3 A person in custody pursuant to the judgment of a state court
4 can obtain a federal writ of habeas corpus only on the ground that
5 he is in custody in violation of the Constitution or laws or
6 treaties of the United States. 28 U.S.C. § 2254(a). Thus, a writ
7 of habeas corpus is available under § 2254(a) "only on the basis
8 of some transgression of federal law binding on the state courts."
9 Middleton v. Cupp, 768 F.2d 1083, 1085 (9th Cir. 1985) (citing
10 Engle v. Isaac, 456 U.S. 107, 119 (1982)). It is unavailable for
11 violations of state law or for alleged error in the interpretation
12 or application of state law. See Estelle v. McGuire, 502 U.S. 62,
13 67-68 (1991).

14 Petitioner's claim that the trial court erred by not granting
15 his motion to dismiss the information alleges a violation of state
16 laws and procedures, and not the violation of a right secured by
17 the United States Constitution or federal law. Therefore, this
18 claim is DISMISSED as not cognizable in federal habeas corpus.
19 Because the petition no longer includes an unexhausted claim,
20 Respondent's motion to dismiss the petition as unexhausted is
21 DENIED.

22 C. Further Proceedings

23 Although the petition will not be dismissed as unexhausted,
24 the Court will not require Respondent to file an answer to the
25 petition at this time. As noted, Petitioner has not opposed the
26 motion to dismiss or communicated with the Court in this case for
27 more than five months. Additionally, the Court was made aware
28 that Petitioner was released from custody more than four months

1 ago only when he filed a notice of change of address in another of
2 his then-pending cases. In the Order to Show Cause issued in this
3 case on August 7, 2012, the Court explained:

4 It is Petitioner's responsibility to prosecute this
5 case. Petitioner must keep the Court and Respondent
6 informed of any change of address and must comply with
7 the Court's orders in a timely fashion. Petitioner must
8 also serve on Respondent's counsel all communications
9 with the Court by mailing a true copy of the document to
10 Respondent's counsel.

11 Docket no. 17 at 2:23-28.

12 Based on the above, and in the interests of the just and
13 efficient resolution of this matter, the case will not proceed
14 further until Petitioner notifies the Court and Respondent of his
15 continued intent to prosecute this action, as set forth below.

16 CONCLUSION

17 For the foregoing reasons, the Court orders as follows:

18 1. Respondent's motion to dismiss the petition as
19 unexhausted is DENIED.

20 2. No later than seven days from the date of this Order
21 Petitioner shall inform the Court and notify Respondent's counsel
22 of his current address and whether he intends to proceed with the
23 prosecution of this action.

24 Petitioner must file his notice with the Court and also serve
25 his notice on Respondent's counsel.

26 3. If Petitioner states his intention to go forward with
27 this action, the Court will set a schedule for further briefing on
28 the merits of the petition.

4. If Petitioner fails to comply with this Order, this
action will be dismissed without prejudice for failure to

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prosecute.

This Order terminates Docket no. 23.

IT IS SO ORDERED.

Dated: 3/19/2013



CLAUDIA WILKEN
United States District Judge