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

KENNETH ADRIAN FULLER,

Petitioner,

vs.

RICK HILL,

Respondent.

No. C 10-05501 EJD (PR)

ORDER OF DISMISSAL WITH
LEAVE TO AMEND

Petitioner, a former prisoner, has filed a pro se petition for a writ of habeas corpus under 28 U.S.C. § 2254, challenging his state conviction.

BACKGROUND

It appears that Petitioner pleaded no contest to receiving stolen property and received a suspended three year state prison sentence and was placed on probation for three years on the conditions, among others, that he serve 10 months in county jail and enter into a residential drug treatment program. People v. Fuller, 2012 WL 1451246 *2 (Cal. App. 1 Dist. April 7, 2012). There were several probation violations and Petitioner eventually served some time in prison. Id. at 2-5. Petitioner is no longer incarcerated.

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1 The petition will be dismissed with leave to amend. In the amended petition,
2 Petitioner must demonstrate that the claims he has brought are exhausted and
3 Petitioner should just include exhausted claims. Petitioner should include petitions
4 to the California Supreme Court and the decision of that Court on the claims he
5 wishes to present in federal court.

6 If the federal petition contains both exhausted and unexhausted claims, it is a
7 “mixed” petition. See Rhines v. Weber, 544 U.S. 269, 277 (2005). The general rule
8 is that a federal district court must dismiss a federal habeas petition containing any
9 claim as to which state remedies have not been exhausted. See Rose v. Lundy, 455
10 U.S. 509, 522 (1982).

11
12 **CONCLUSION**

13 For the foregoing reasons,

14 1. The petition is DISMISSED with leave to amend. Petitioner must,
15 within **twenty-eight (28) days** of the date this order is filed, file an amended petition
16 challenging the lawfulness of the state conviction for which he is currently
17 incarcerated. See 28 U.S.C. § 2254(b), (c); Rose v. Lundy, 455 U.S. 509, 515-16
18 (1982). The amended petition must include the caption and civil case number used
19 in this order, No. C 10-05501 EJD (PR), and must include the words **AMENDED**
20 **PETITION** on the first page.

21 **Failure to file a timely response in accordance with this order will result**
22 **in the dismissal of this action without prejudice and without further notice to**
23 **Petitioner.**

24 The Clerk shall include two copies of the court’s form petition with a copy of
25 this order to Petitioner.

26 DATED: 2/4/2013

27 
EDWARD J. DAVILA
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

KENNETH ADRIAN FULLER,

Petitioner,

vs.

Case Number CV 10-05501 EJD (PR)

CERTIFICATE OF SERVICE

RICK HILL,

Respondent.

_____/

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 2/6/2013, 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) inter-office delivery receptacle located in the Clerk's office.

Kenneth Adrian Fuller
45 Pearce Street
Petaluma, CA 95490

DATED: 2/6/2013

Richard W. Wieking, Clerk
/s/ By: Elizabeth Garcia, Deputy Clerk