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

MICHAEL JAMES, )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 WARDEN KEVIN CHAPPELL, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

No. C 12-1475 LHK (PR)  
ORDER GRANTING MOTION TO  
DISMISS

Petitioner, a state prisoner proceeding *pro se*, seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2254 challenging his conviction and sentence. Respondent has filed a motion to dismiss for failure to exhaust. Although given an opportunity, Plaintiff did not file an opposition. For the reasons below, the Court GRANTS Respondent’s motion to dismiss, and DISMISSES this action.

**BACKGROUND**

Petitioner challenges his 2009 criminal conviction and sentence in the Alameda County Superior Court. (Pet. at 2.) That same year, a petition to revoke Petitioner’s probation was filed, and on October 13, 2009, the trial court found Petitioner in violation of his probation, and committed him to 120 days in jail. (Mot. at 2.) The California Court of Appeal affirmed both Petitioner’s original conviction, as well as the probation revocation, on May 11, 2011. (Mot., Ex. 1, App. A.) On July 27, 2011, the California Supreme Court denied review. (Mot., Ex. 2.)

1 Petitioner did not file any state habeas petitions challenging these convictions. The underlying  
2 federal petition was filed on March 23, 2012.

3 In its order to show cause, this Court found that Petitioner presented two cognizable  
4 claims: (1) Petitioner’s no contest plea was involuntary because he was not informed of the  
5 direct consequences when accepting the plea, and (2) the prosecution withheld favorable,  
6 exculpatory evidence.

### 7 DISCUSSION

8 Prisoners in state custody who wish to challenge collaterally in federal habeas  
9 proceedings either the fact or length of their confinement are first required to exhaust state  
10 judicial remedies, either on direct appeal or through collateral proceedings, by presenting the  
11 highest state court available with a fair opportunity to rule on the merits of each and every claim  
12 they seek to raise in federal court. *See* 28 U.S.C. § 2254(b), (c). The exhaustion-of-state-  
13 remedies doctrine reflects a policy of federal-state comity to give the state “the initial  
14 ‘opportunity to pass upon and correct alleged violations of its prisoners’ federal rights.’” *Picard*  
15 *v. Connor*, 404 U.S. 270, 275 (1971) (citations omitted). The exhaustion requirement is satisfied  
16 only if the federal claim has been “fairly presented” to the state courts. *See id.*; *Peterson v.*  
17 *Lampert*, 319 F.3d 1153, 1155-56 (9th Cir. 2003) (en banc). The state’s highest court must be  
18 given an opportunity to rule on the claims even if review is discretionary. *See O’Sullivan v.*  
19 *Boerckel*, 526 U.S. 838, 845 (1999) (petitioner must invoke “one complete round of the State’s  
20 established appellate review process.”). A federal district court must dismiss a federal habeas  
21 petition containing any claim as to which state remedies have not been exhausted. *See Rhines v.*  
22 *Webber*, 544 U.S. 269, 273 (2005).

23 Respondent moves to dismiss the petition on the ground that Petitioner failed to exhaust  
24 either claim. Respondent attached a copy of Petitioner’s petition for review to the California  
25 Supreme Court, which shows that the only claims Petitioner raised to the highest state court  
26 were: (1) the trial court abused its discretion by denying Petitioner’s request to continue the  
27 probation revocation hearing, and (2) the probation revocation was improperly based on a  
28 finding that Petitioner was an aider and abettor. (Mot., Ex. 1 at 12-18.) Petitioner has not

1 submitted any evidence to the contrary. Thus, it appears that Petitioner has not fairly presented  
2 his claims in the underlying federal petition of habeas corpus to the highest state court.  
3 Accordingly, the Court GRANTS Respondent's motion to dismiss and DISMISSES this action.

4 **CONCLUSION**

5 For the foregoing reasons, Respondent's motion to dismiss is GRANTED. The petition  
6 is dismissed because state court remedies were not exhausted before the petition was filed.

7 The federal rules governing habeas cases brought by state prisoners require a district  
8 court that denies a habeas petition to grant or deny a certificate of appealability ("COA") in its  
9 ruling. See Rule 11(a), Rules Governing § 2254 Cases, 28 U.S.C. foll. § 2254. Petitioner has  
10 not shown "that jurists of reason would find it debatable whether the petition states a valid claim  
11 of the denial of a constitutional right." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

12 Accordingly, a COA is DENIED.

13 The clerk shall terminate any pending motions and close the file.

14 IT IS SO ORDERED.

15 DATED: 11/12/12

  
LUCY H. KOH  
United States District Judge