

1
2
3
4
5
6
7
8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 ELIJAH SAMSON LOPEZ,) No. C 12-5254 LHK (PR)
11)
12 Petitioner,) ORDER OF DISMISSAL; DENYING
13 vs.) CERTIFICATE OF
14 AUDREY KING,) APPEALABILITY
15 Respondent.)
_____)

16
17 Petitioner, a civilly detained person proceeding *pro se*, seeks a writ of habeas corpus
18 pursuant to 28 U.S.C. § 2254. In the underlying petition, petitioner challenges a 2004 decision
19 to commit petitioner under the Sexually Violent Predator Act. Petitioner conceded that he did
20 not raise his claims before the California Supreme Court. This court issued an order to petitioner
21 to show cause why the petition should not be dismissed for failure to exhaust state court
22 remedies. Petitioner has filed a response arguing that he is entitled to proceed because of
23 exceptional circumstances. Specifically, petitioner gives reasons as to why he should not be
24 adjudged a Sexually Violent Predator. For the reasons stated below, the court DISMISSES the
25 petition without prejudice for failure to exhaust.

26 As the court previously advised petitioner, prisoners in state custody who wish to
27 collaterally challenge either the fact or length of their confinement in federal habeas corpus
28 proceedings are first required to exhaust state judicial remedies, either on direct appeal or

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

14 Petitioner has not presented any exceptional circumstances to excuse his failure to
15 exhaust. Exhaustion is excused if either “there is an absence of available State corrective
16 process” or “circumstances exist that render such process ineffective to protect the rights of the
17 applicant.” 28 U.S.C. § 2254(b)(1)(B)(i)-(ii); *Edelbacher v. Calderon*, 160 F.3d 582, 585 (9th
18 Cir. 1998) (requiring “extremely unusual circumstances”). Here, petitioner does not demonstrate
19 that he is precluded from filing his claims in the California Supreme Court. Moreover,
20 petitioner’s concedes that he did not present any of the underlying claims to the California
21 Supreme Court before filing this federal petition. Thus, petitioner has not fairly presented his
22 claims to the highest state court prior to commencing this action. Accordingly, the court
23 DISMISSES this action without prejudice for failure to exhaust.

24 The federal rules governing habeas cases brought by state prisoners require a district
25 court that denies a habeas petition to grant or deny a certificate of appealability (“COA”) in its
26 ruling. *See* Rule 11(a), Rules Governing § 2254 Cases, 28 U.S.C. foll. § 2254. Petitioner has
27 not shown “jurists of reason would find it debatable whether the petition states a valid claim of
28 the denial of a constitutional right and that jurists of reason would find it debatable whether the

1 district court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

2 Accordingly, a COA is DENIED.

3 IT IS SO ORDERED.

4 DATED: 3/13/14

Lucy H. Koh

LUCY H. KOH
United States District Judge