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

11 TOMMY BROWN,) No. C 13-4424 LHK (PR)
12)
13) Petitioner,) ORDER GRANTING MOTION
14) v.) TO RE-OPEN CASE; ORDER TO
15) WARDEN RANDY GROUNDS,) SHOW CAUSE WHY PETITION
16) SHOULD NOT BE DISMISSED
17) FOR FAILURE TO EXHAUST
18) STATE REMEDIES
19)
20) Respondent.) (Docket No. 5)
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Petitioner, a California prisoner proceeding *pro se*, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On November 5, 2013, the court dismissed this action for failure to pay the filing fee or file a completed application for leave to proceed in forma pauperis. On November 26, 2013, the court received the \$5.00 filing fee, along with the receipt indicating that petitioner had timely paid the filing fee on October 29, 2013. Thus, petitioner's motion to re-open this action is GRANTED. The court issues an order to show cause to petitioner to demonstrate why the petition should not be dismissed without prejudice for failure to exhaust his state court remedies.

BACKGROUND

In the underlying federal petition, petitioner challenges the criminal judgment against him. Petitioner concedes that he has not raised any claims of his federal claims in the California Supreme Court.

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At the time petitioner filed the federal petition, it appeared that petitioner was challenging his conviction based on “newly discovered evidence” and actual innocence. Petitioner stated that he had filed a state habeas petition in the Superior Court, and indicated that he had not exhausted his underlying claims in the California Supreme Court. Thus, this court orders petitioner to show cause to demonstrate why the petition should not be dismissed without prejudice to refiling once he exhausts his underlying federal claims in state court.

Petitioner is reminded that he must keep the court and all parties informed of any change of address by filing a separate paper captioned “Notice of Change of Address.” Petitioner must also comply with the court’s orders in a timely fashion. Failure to do so may result in the dismissal of this action for failure to prosecute. *See* Fed. R. Civ. Pro. 41(b).

DATED: 3/21/14

Order Granting Motion to Re-Open Case; Order to Show Cause Why Petition Should Not Be Dismissed for Failure to Exhaust State Remedies
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