

United States District Court
Northern District of California

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DONALD PHILLIPS,
Petitioner,
v.
NAPA STATE HOSPITAL,
Respondent.

Case No. 17-cv-01513 NC (PR)

ORDER OF DISMISSAL

Donald Phillips, a California state prisoner proceeding *pro se*, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.¹ On May 24, 2017, the Court issued an order to Petitioner to show cause why the petition should be not be dismissed for failing to exhaust state court remedies. The Court ordered Petitioner to file a response to this order to show cause within thirty (30) days of the filing date of this order addressing: (1) whether he has a habeas petition, appeal, or other post-conviction proceeding now pending before the state court; and, if so, (2) which level of state court and whether the underlying

¹ Petitioner has consented to magistrate judge jurisdiction. Docket No. 2.

Case No. 17-cv-01513 NC (PR)
ORDER OF DISMISSAL

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

petition challenges the same commitment at issue in his pending state case(s). The Court warned Petitioner that the failure to file a timely response would result in the Court dismissing the instant petition without prejudice for failure to exhaust state court remedies.

More than thirty days have passed, and Petitioner has not responded, or otherwise communicated with the Court. Accordingly, Petitioner’s case is DISMISSED without prejudice. The clerk shall terminate any pending motions and close the file.

The federal rules governing habeas cases brought by state prisoners require a district court that denies a habeas petition to grant or deny a certificate of appealability (“COA”) in its ruling. *See* Rule 11(a), Rules Governing § 2254 Cases, 28 U.S.C. foll. § 2254. Petitioner has not shown “that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Accordingly, a COA is DENIED.

IT IS SO ORDERED.

DATED: July 18, 2017



NATHANAEL M. COUSINS
United States Magistrate Judge