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CLERK US DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 WILBUR LANN PITTMAN,  
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Petitioner,  
v.  
Respondents.

Civil No. 10-0926 BEN (WVG)

**ORDER:**

**(1) DENYING MOTION TO  
PROCEED IN FORMA PAUPERIS;  
and**

**(2) DISMISSING CASE  
WITHOUT PREJUDICE AND WITH  
LEAVE TO AMEND**

Petitioner, a state prisoner proceeding pro se, has filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 together with a motion to proceed in forma pauperis.

**MOTION TO PROCEED IN FORMA PAUPERIS**

The request to proceed in forma pauperis is **DENIED** because Petitioner has not provided the Court with sufficient information to determine Petitioner's financial status. A request to proceed in forma pauperis made by a state prisoner must include a signed certificate from the warden or other appropriate officer showing the amount of money or securities Petitioner has on account in the institution. Rule 3(a)(2), 28 U.S.C. foll. § 2254; Local Rule 3.2. Petitioner has failed to provide the Court with the required Prison Certificate.

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1 VENUE

2 A petition for writ of habeas corpus may be filed in the United States District Court of  
3 either the judicial district in which the petitioner is presently confined or the judicial district in  
4 which he was convicted and sentenced. See 28 U.S.C. § 2241(d); *Braden v. 30th Judicial*  
5 *Circuit Court*, 410 U.S. 484, 497 (1973). Petitioner is presently confined at California  
6 Rehabilitation Center in Norco, California, which is within the jurisdictional boundaries of the  
7 United States District Court for the Central District of California, Eastern Division. See  
8 28 U.S.C. § 84(c)(1). It is not clear from the petition where the state court conviction Petitioner  
9 seeks to challenge occurred. Thus, this Court may not have jurisdiction over the matter. If  
10 Petitioner wishes to proceed with this case, he must inform the Court where the state court  
11 conviction he seeks to challenge took place.

12 FAILURE TO NAME A PROPER RESPONDENT

13 Further, review of the Petition reveals that Petitioner has failed to name a proper  
14 respondent. On federal habeas, a state prisoner must name the state officer having custody of  
15 him as the respondent. *Ortiz-Sandoval v. Gomez*, 81 F.3d 891, 894 (9th Cir. 1996) (citing Rule  
16 2(a), 28 U.S.C. foll. § 2254). “The ‘state officer having custody’ may be ‘either the warden of  
17 the institution in which the petitioner is incarcerated . . . or the chief officer in charge of state  
18 penal institutions.’” *Id.* (quoting Rule 2(a), 28 U.S.C. foll. § 2254 advisory committee’s note).

19 Here, Petitioner incorrectly named “Peterson” and “Riverside County” as Respondents.  
20 In order for this Court to entertain the Petition filed in this action, Petitioner must name the  
21 warden *currently* in charge of the state correctional facility in which Petitioner is presently  
22 confined or the Secretary of the California Department of Corrections and Rehabilitation.  
23 *Brittingham v. United States*, 982 F.2d 378, 379 (9th Cir. 1992) (per curiam).

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1                   **FAILURE TO ALLEGE EXHAUSTION OF STATE JUDICIAL REMEDIES**

2                   In addition, habeas petitioners who wish to challenge either their state court conviction  
3 or the length of their confinement in state prison, must first exhaust state judicial remedies. 28  
4 U.S.C. § 2254(b), (c); *Granberry v. Greer*, 481 U.S. 129, 133-34 (1987). Ordinarily, to satisfy  
5 the exhaustion requirement, a petitioner must “fairly present[] his federal claim to the highest  
6 state court with jurisdiction to consider it . . . or . . . demonstrate[] that no state remedy remains  
7 available. *Johnson v. Zenon*, 88 F.3d 828, 829 (9th Cir. 1996) (citing *Picard v. Connor*, 404  
8 U.S. 270, 275 (1971); *Anderson v. Harless*, 459 U.S. 4, 6 (1982)). Moreover, to properly  
9 exhaust state court remedies a petitioner must allege, in state court, how one or more of his or  
10 her federal rights have been violated. For example, “[i]f a habeas petitioner wishes to claim that  
11 an evidentiary ruling at a state court trial denied him [or her] the due process of law guaranteed  
12 by the Fourteenth Amendment, he [or she] must say so, not only in federal court, but in state  
13 court.” *See Duncan v. Henry*, 513 U.S. 364, 365-66 (1995)(emphasis added).

14                   Nowhere on the Petition does Petitioner allege that he raised his claims in the California  
15 Supreme Court. In fact, he specifically indicates he did not seek review in the California  
16 Supreme Court. (*See* Pet. at 2-5.) If Petitioner has raised his claims in the California Supreme  
17 Court he must so specify.

18                   Further, the Court cautions Petitioner that under the Antiterrorism and Effective Death  
19 Penalty Act of 1996 (AEDPA) a one-year period of limitation shall apply to a petition for a writ  
20 of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation  
21 period shall run from the latest of:

22                                   (A) the date on which the judgment became final by the  
23                                   conclusion of direct review or the expiration of the time for seeking  
24                                   such review;

25                                   (B) the date on which the impediment to filing an application  
26                                   created by State action in violation of the Constitution or laws of the  
27                                   United States is removed, if the applicant was prevented from filing  
28                                   by such State action;

                                 (C) the date on which the constitutional right asserted was  
initially recognized by the Supreme Court, if the right has been  
newly recognized by the Supreme Court and made retroactively  
applicable to cases on collateral review; or

1 (D) the date on which the factual predicate of the claim or  
2 claims presented could have been discovered through the exercise  
of due diligence.

3 28 U.S.C.A. § 2244(d)(1)(A)-(D) (West Supp. 2002).

4 The statute of limitations does not run while a properly filed state habeas corpus petition  
5 is pending. 28 U.S.C. § 2244(d)(2); *see Nino v. Galaza*, 183 F.3d 1003, 1006 (9th Cir. 1999).  
6 *But see Artuz v. Bennett*, 531 U.S. 4, 8 (2000) (holding that “an application is ‘properly filed’  
7 when its delivery and acceptance [by the appropriate court officer for placement into the record]  
8 are in compliance with the applicable laws and rules governing filings.”). However, absent some  
9 other basis for tolling, the statute of limitations does run while a federal habeas petition is  
10 pending. *Duncan v. Walker*, 533 U.S. 167, 181-82 (2001).

11 Rule 4 of the Rules Governing Section 2254 Cases provides for summary dismissal of a  
12 habeas petition “[i]f it plainly appears from the face of the petition and any exhibits annexed to  
13 it that the petitioner is not entitled to relief in the district court . . .” Rule 4, 28 U.S.C. foll.  
14 § 2254. Here, it appears plain from the Petition that Petitioner is not presently entitled to federal  
15 habeas relief because he has not alleged exhaustion of state court remedies.

16 **FAILURE TO STATE A COGNIZABLE FEDERAL CLAIM**

17 Additionally, in accordance with Rule 4 of the rules governing § 2254 cases, Petitioner  
18 has failed to allege that his state court conviction or sentence violates the Constitution of the  
19 United States.

20 Title 28, United States Code, § 2254(a), sets forth the following scope of review for  
21 federal habeas corpus claims:

22 The Supreme Court, a Justice thereof, a circuit judge, or a district  
23 court shall entertain an application for a writ of habeas corpus in  
24 behalf of a person in custody pursuant to the judgment of a State  
court only on the ground that he is in custody in violation of the  
Constitution or laws or treaties of the United States.

25 28 U.S.C. § 2254(a) (emphasis added). *See Hernandez v. Ylst*, 930 F.2d 714, 719 (9th Cir.  
26 1991); *Mannhalt v. Reed*, 847 F.2d 576, 579 (9th Cir. 1988); *Kealohapauole v. Shimoda*, 800  
27 F.2d 1463, 1464-65 (9th Cir. 1986). Thus, to present a cognizable federal habeas corpus claim  
28 under § 2254, a state prisoner must allege both that he is in custody pursuant to a “judgment of

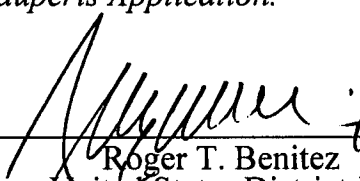
1 a State court," and that he is in custody in "violation of the Constitution or laws or treaties of the  
2 United States." See 28 U.S.C. § 2254(a). In no way does Petitioner claim he is "in custody in  
3 violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254.

4 **CONCLUSION**

5 For all the foregoing reasons, the Court **DISMISSES** this case without prejudice and with  
6 leave to amend. If Petitioner wishes to proceed with this case, he must, **no later than July 13,**  
7 **2010**: (1) pay the \$5.00 filing fee **OR** submit adequate proof of his inability to pay the fee; **AND**  
8 (2) file a First Amended Petition which cures the pleading deficiencies outlined in this Order.  
9 *For Petitioner's convenience, the Clerk of Court shall attach to this Order a blank First*  
10 *Amended Petition form and a blank In Forma Pauperis Application.*

11 **IT IS SO ORDERED.**

12 DATED: 5/06/2010

  
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Roger T. Benitez  
United States District Judge

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