

1  
2  
3  
4  
5  
6  
7  
8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
10

11 Michael Sutton,

12 Petitioner,

13 v.

14 William D. Gore, Warden,

15 Respondent.  
16

Case No.: 16-cv-1854-JAH-AGS

**REPORT AND RECOMMENDATION TO  
GRANT WARDEN’S MOTION TO  
DISMISS (ECF No. 9)**

17  
18 Pro se petitioner Michael Sutton failed to provide evidence that he exhausted his  
19 claims despite an opportunity do so. For the following reasons, the Court recommends  
20 granting respondent’s dismissal motion.

21 A federal court must “dismiss a petition for a writ of habeas corpus containing any  
22 claims that have not been exhausted in the state courts.” *Rose v. Lundy*, 455 U.S. 509, 510  
23 (1982); *see also* 28 U.S.C. § 2254(b)(1)(A). Adhering to this doctrine “protects the state  
24 court’s role in the enforcement of federal law and prevents disruption of state judicial  
25 proceedings.” *Dixon v. Baker*, 847 F.3d 714, 718 (9th Cir. 2017). Thus, this Court cannot  
26 hear unexhausted claims. *Andrews v. Davis*, 798 F.3d 759, 790 (9th Cir. 2015) (holding  
27  
28

1 that a federal court may not grant habeas relief to state prisoners who have not properly  
2 exhausted their state court remedies).

3 Sutton has not exhausted any of his claims. In his initial filing, Sutton admits he  
4 failed to file a direct appeal or a habeas petition with any California state court. (ECF No. 1,  
5 at 15-19.) Sutton later amended his filing, stating he filed a habeas petition with each level  
6 of the California state courts until the petition was denied by the California Supreme Court  
7 for improper filing. (ECF No. 2, at 15-19.) But the California Supreme Court's website  
8 reveals no such proceedings.<sup>1</sup> The Court ordered Sutton to provide evidence in support of  
9 his claim that he filed a state habeas petition, but he failed to do so.

10 Thus, the Court recommends **GRANTING** defendant's dismissal motion and  
11 dismissing Sutton's petition. Upon being served with a copy of this report, the parties have  
12 14 days to file any objections. Upon being served with any such objection, the party  
13 receiving it has 14 days to file any response. *See* Fed. R. Civ. P. 72(b)(2).

14 Dated: July 27, 2017

15   
16 Hon. Andrew G. Schopler  
17 United States Magistrate Judge  
18  
19  
20  
21  
22  
23  
24

---

25  
26  
27 <sup>1</sup> As of July 27, 2017, a search of [www.courts.ca.gov](http://www.courts.ca.gov) shows no filings from Sutton.