

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
DISTRICT OF NEVADA

* * *

YOSVANY RUZ LOPEZ,

v.
WARDEN R BAKER, et al.,

Petitioner,

Respondents.

Case No. 2:16-cv-01708-KJD-NJK

ORDER

Petitioner Yosvany Ruz Lopez has submitted a *pro se* habeas corpus petition (ECF No. 1-1) and has now paid the filing fee (see ECF No. 6). The petition shall be dismissed without prejudice because it is wholly unexhausted.

A federal court will not grant a state prisoner’s petition for habeas relief until the prisoner has exhausted his available state remedies for all claims raised. *Rose v. Lundy*, 455 U.S. 509 (1982); 28 U.S.C. § 2254(b). A petitioner must give the state courts a fair opportunity to act on each of his claims before he presents those claims in a federal habeas petition. *O’Sullivan v. Boerckel*, 526 U.S. 838, 844 (1999); see also *Duncan v. Henry*, 513 U.S. 364, 365 (1995). A claim remains unexhausted until the petitioner has given the highest available state court the opportunity to consider the claim through direct appeal or state collateral review proceedings. See *Casey v. Moore*, 386 F.3d 896, 916 (9th Cir. 2004); *Garrison v. McCarthy*, 653 F.2d 374, 376 (9th Cir. 1981).

Here, petitioner was convicted in a state-court case as well as in a federal case, and he seeks to challenge his sentence structure (ECF No. 1-1). He acknowledges on

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

the face of his petition that he has not exhausted any claims in the state courts. *Id.* However, a challenge to the calculation or structure of his sentences may impact the date of his release from custody, which may implicate his rights under 28 U.S.C. § 2254. Petitioner must first present this claim to the Nevada state courts.

IT IS THEREFORE ORDERED that the Clerk **shall file and ELECTRONICALLY SERVE** the petition (ECF No. 1-1) on the respondents.

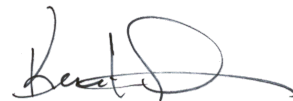
IT IS FURTHER ORDERED that the Clerk shall add Adam Paul Laxalt, Nevada Attorney General, as counsel for respondents.

IT IS FURTHER ORDERED that this action is **DISMISSED** without prejudice as set forth in this order.

IT IS FURTHER ORDERED that a certificate of appealability is **DENIED**.

IT IS FURTHER ORDERED that the Clerk shall enter judgment accordingly and close this case.

DATED: 13 December 2016.



KENT J. DAWSON
UNITED STATES DISTRICT JUDGE