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6 UNITED STATES DISTRICT COURT  
7 DISTRICT OF NEVADA

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9 ANTHONY MICHAEL MARCELLI, Case No. 3:16-cv-00503-MMD-WGC

10 v. Petitioner,

11 ISIDRO BACA, et al., ORDER

12 Respondents.

14 Petitioner Anthony Michael Marcelli has submitted a *pro se* habeas corpus  
15 petition (ECF No. 1-1). His application to proceed *in forma pauperis* (ECF No. 1) will be  
16 granted. The petition will be dismissed without prejudice because several claims are not  
17 cognizable in federal habeas corpus and, to the extent that petitioner includes any  
18 cognizable claims, they are wholly unexhausted.

19 First, a federal court will not grant a state prisoner's petition for habeas relief until  
20 the prisoner has exhausted his available state remedies for all claims raised. *Rose v.*  
21 *Lundy*, 455 U.S. 509 (1982); 28 U.S.C. § 2254(b). A petitioner must give the state  
22 courts a fair opportunity to act on each of his claims before he presents those claims in  
23 a federal habeas petition. *O'Sullivan v. Boerckel*, 526 U.S. 838, 844 (1999); *see also*  
24 *Duncan v. Henry*, 513 U.S. 364, 365 (1995). A claim remains unexhausted until the  
25 petitioner has given the highest available state court the opportunity to consider the  
26 claim through direct appeal or state collateral review proceedings. *See Casey v. Moore*,  
27 386 F.3d 896, 916 (9th Cir. 2004); *Garrison v. McCarthey*, 653 F.2d 374, 376 (9th Cir.  
28 1981). Here, Marcelli includes a claim that the Nevada Department of Corrections

1 refuses to properly apply the state statutory scheme that provides for good-time credits,  
2 and therefore, is improperly calculating his sentence. He acknowledges on the face of  
3 his petition that he has not exhausted any claims in the state courts (see, e.g., ECF No.  
4 1-1 at 4). Marcelli states that this is because he is not challenging the fact of his  
5 conviction. (*Id.*) However, a challenge to the calculation of his sentence may impact the  
6 date of his release from custody, which may implicate his rights under 28 U.S.C. §  
7 2254. Marcelli must first present this claim to the Nevada state courts.

8 The remaining claims that petitioner sets forth are not cognizable in habeas  
9 corpus. Instead, he alleges violations of his rights pursuant to The Americans with  
10 Disabilities Act, namely allegations that prison personnel refuse to give him any prison  
11 jobs on the basis of his physical disabilities (see, e.g., ECF No. 1-1 at 3). 42 U.S.C. §  
12 12182(a); see, e.g., *Nettles v. Grounds*, 788 F.3d 992, 1001 (9<sup>th</sup> Cir. 2015) (“[R]elief is  
13 available to a prisoner under the federal habeas statute only if success on the claim  
14 would ‘necessarily spell speedier release’ from custody.”). Therefore, the petition will be  
15 dismissed because the ADA claims do not state a claim for which federal habeas relief  
16 may be granted and because Marcelli has not exhausted his claims that his sentence  
17 has been miscalculated.

18 It is therefore ordered that petitioner’s application to proceed *in forma pauperis*  
19 (ECF No. 1) is granted.

20 It is further ordered that the Clerk file and electronically serve the petition (ECF  
21 No. 1-1) on the respondents.

22 It is further ordered that the Clerk add Adam Paul Laxalt, Nevada Attorney  
23 General, as counsel for respondents.

24 It is further ordered that this action is dismissed without prejudice as set forth in  
25 this order.

26 It is further ordered that a certificate of appealability is denied.

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1 It is further ordered that the Clerk enter judgment accordingly and close this  
2 case.

3 DATED THIS 18<sup>th</sup> day of October 2016.

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6 MIRANDA M. DU  
7 UNITED STATES DISTRICT JUDGE  
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