

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF PUERTO RICO

3 HECTOR M. RIVERA-VALENTÍN,

4 Petitioner,

5 v.

6 EL PUEBLO DE PUERTO RICO,

7 Respondent.

Civil No. 10-1413 (JAF)

8 **ORDER**

9 Petitioner, Héctor M. Rivera-Valentín, brings this pro-se petition under 28 U.S.C. § 2254
10 for relief from sentencing by a Commonwealth court, alleging that the sentence was imposed
11 in violation of his constitutional rights to effective assistance of counsel and due process.

12 (Docket Nos. 1; 10.) Respondent opposes, alleging that Petitioner has not exhausted remedies
13 available in the Commonwealth courts. (Docket No. 9.) Petitioner responds. (Docket No. 11.)

14 A prisoner under sentence of a Commonwealth court must exhaust remedies available
15 under Commonwealth law before petitioning the federal court for a writ of habeas corpus. See
16 28 U.S.C. § 2254(b)(1)(A). A petitioner has not exhausted available remedies “unless and until
17 the substance of those claims has been fairly presented to the [Commonwealth’s] highest court.”
18 Barresi v. Maloney, 296 F.3d 48, 51 (1st Cir. 2002). Section 2254 provides two exceptions to
19 this rule in cases where “there is an absence of available [Commonwealth] corrective process;
20 or circumstances exist that render such processes ineffective to protect the rights of the
21 applicant.” § 2254(b)(1)(B)(i)–(ii). The petitioner bears the burden of showing that “he

1 tendered his federal claim [to the Commonwealth’s highest court] in such a way as to make it
2 probable that a reasonable jurist would have been alerted to the existence of the federal
3 question.” See Barresi, 296 F.3d at 51(quoting Casella v. Clemons, 207 F.3d 18, 20 (1st Cir.
4 2000)) (internal quotation marks omitted). This duty to exhaust state court remedies
5 encompasses collateral review. See § 2254(c) (stating that a claim has not been exhausted
6 where petitioner “has the right under the law of the [Commonwealth] to raise, by any available
7 procedure, the question presented.”)

8 Puerto Rico’s Department of Justice asserts that Petitioner has neither directly appealed
9 his sentence nor exhausted collateral relief. (Docket No. 9 at 6–8.) Petitioner does not refute
10 this argument, stating only that his trial attorney refused to take his appeal and that another
11 attorney he recently consulted stated “that there is nothing that can be done.” (Docket No. 13.)
12 Under Puerto Rico law, a prisoner seeking a writ of habeas corpus must first file a motion in the
13 trial court under Rule of Criminal Procedure 192.1, 34 L.P.R.A. App. II, R. 192.1 (2004). See
14 34 L.P.R.A. § 1741. Petitioner states, “I have sent five 5 five [sic] motions asking the
15 honorable court for a reconsideration of my sentence.” (Docket No. 10 at 4.) This does not
16 satisfy Petitioner’s burden of proving that he brought his claim before the Puerto Rico Supreme
17 Court. The denial of these five motions, presumably Rule 192.1 motions, could be appealed,
18 or Petitioner could apply directly for a writ of habeas corpus. As it stands, Petitioner has not
19 yet exhausted available remedies.

20 Finally, we note that Petitioner has not argued the existence of the circumstances
21 enumerated in § 2255(b)(1)(B), that could excuse his failure to exhaust.

