

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Jul 22, 2019**

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

IRA L. WEST,

No. 1:19-cv-03124-SMJ

Petitioner,

**ORDER GRANTING  
APPLICATION TO PROCEED *IN  
FORMA PAUPERIS* AND  
SUMMARILY DISMISSING  
HABEAS CORPUS PETITION**

v.

STATE OF WASHINGTON,

Respondent.

Petitioner Ira L. West, a prisoner at the Coyote Ridge Corrections Center, brings this *pro se* Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus By a Person in State Custody, ECF No. 1. Because it appears Petitioner lacks sufficient funds to prosecute this action, his request to proceed *in forma pauperis* is granted and this action may proceed without payment of the filing fee.

**PROPER RESPONDENT**

An initial defect with the petition is that it fails to name a proper party as a respondent. The proper respondent in a federal petition seeking habeas corpus relief is the person having custody of the petitioner. *Rumsfeld v. Padilla*, 542 U.S. 426 (2004); *Stanley v. Cal. Supreme Court*, 21 F.3d 359, 360 (9th Cir. 1994). If the petitioner is incarcerated, the proper respondent is generally the warden of the

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1 institution where the petitioner is incarcerated. *See Ortiz-Sandoval v. Gomez*, 81  
2 F.3d 891 (9th Cir. 1996). Failure to name a proper respondent deprives federal  
3 courts of personal jurisdiction. *See Stanley*, 21 F.3d at 360.

#### 4 **EXHAUSTION REQUIREMENT**

5 Petitioner challenges his 2018 Yakima County plea of *nolo contendere* to  
6 second degree assault, domestic violence; felony violation of a no-contact order,  
7 domestic violence; felony harassment, domestic violence; and four additional  
8 charges of felony harassment and violation of a no-contact order, domestic violence.  
9 He received a sentence of thirty months' confinement. Petitioner indicates that he  
10 did not appeal from the judgment of conviction. ECF No. 1 at 2.

11 In his grounds for relief, Petitioner argues that the State of Washington has  
12 no jurisdiction to decide federal constitutional matters. *Id.* at 5–12. It has long been  
13 settled that state courts are competent to decide questions arising under the U.S.  
14 Constitution. *See Baker v. Grice*, 169 U.S. 284, 291 (1898) (“It is the duty of the  
15 state court, as much as it is that of the federal courts, when the question of the  
16 validity of a state statute is necessarily involved, as being in alleged violation of any  
17 provision of the federal constitution, to decide that question, and to hold the law  
18 void if it violate that instrument.”); *see also Worldwide Church of God v. McNair*,  
19 805 F.2d 888, 891 (9th Cir. 1986) (holding that state courts are as competent as  
20 federal courts to decide federal constitutional matters). Therefore, Petitioner’s

1 arguments to the contrary lack merit.

2       Additionally, before a federal court may grant habeas corpus relief to a state  
3 prisoner, the prisoner must exhaust the state court remedies available to him or her.  
4 28 U.S.C. § 2254(b); *Baldwin v. Reese*, 541 U.S. 27 (2004). Exhaustion generally  
5 requires that a prisoner give the state courts an opportunity to act on his or her claims  
6 before he or she presents those claims to a federal court. *O’Sullivan v. Boerckel*,  
7 526 U.S. 838 (1999). A petitioner has not exhausted a claim for relief so long as he  
8 or she has a right under state law to raise the claim by an available procedure. *See*  
9 *id.*; 28 U.S.C. § 2254(c).

10       To meet the exhaustion requirement, the petitioner must have “fairly  
11 present[ed] his claim in each appropriate state court (including a state supreme court  
12 with powers of discretionary review), thereby alerting that court to the federal  
13 nature of the claim.” *Baldwin*, 541 U.S. at 29; *see also Duncan v. Henry*, 513 U.S.  
14 364, 365–66 (1995). A petitioner fairly presents a claim to a state court by  
15 describing the factual or legal bases for that claim and by alerting the state court “to  
16 the fact that the . . . [petitioner is] asserting claims under the United States  
17 Constitution.” *Duncan*, 513 U.S. at 365–66; *see also Tamalini v. Stewart*, 249 F.3d  
18 895, 898 (9th Cir. 2001) (same). Mere similarity between a claim raised in a state  
19 court and a claim in a federal habeas corpus petition is insufficient. *Duncan*, 513  
20 U.S. at 365–66.

1 Furthermore, to fairly present a claim, the petitioner “must give the state  
2 courts one full opportunity to resolve any constitutional issues by invoking one  
3 complete round of the State’s established appellate review process.” *O’Sullivan*,  
4 526 U.S. at 845. Once a federal claim has been fairly presented to the state courts,  
5 the exhaustion requirement is satisfied. *See Picard v. Connor*, 404 U.S. 270, 275  
6 (1971). It appears from the face of the petition and the attached documents that  
7 Petitioner has not exhausted his state court remedies as to each of his grounds for  
8 relief. Indeed, Petitioner affirmatively represents that he did not exhaust his state  
9 court remedies.

#### 10 **GROUND FOR FEDERAL HABEAS CORPUS RELIEF**

11 Petitioner asserts that the Washington State Constitution contradicts the U.S.  
12 Constitution regarding the Fifth Amendment right to “presentment or indictment of  
13 a Grand Jury.” ECF No. 1. He claims “no bill of indictment” was brought against  
14 him, rendering his arrest, conviction, and imprisonment illegal. *Id.*

15 Petitioner seems to argue that because the state courts have defied “federally  
16 established procedures and processes for the adjudication of crimes,” only “a court  
17 of federal jurisdiction” has jurisdictional authority over his claims. *Id.* His bald  
18 assertion that “due process of the law was ignored” is unsupported by his factual  
19 allegations. *Id.*

20 As the U.S. Supreme Court stated long ago, “Prosecution by information

1 instead of by indictment is provided for by the laws of Washington. This is not a  
2 violation of the Federal Constitution.” See *Gaines v. Washington*, 277 U.S. 81, 86  
3 (1928). There is simply no federal constitutional violation when a prosecuting  
4 attorney’s criminal information is substituted for a grand jury’s indictment. See  
5 *Hurtado v. California*, 110 U.S. 516 (1884) (rejecting the claim that an indictment  
6 is essential to due process of law and that a state violates the Fourteenth Amendment  
7 by prosecuting a defendant with a criminal information). Consequently, Petitioner’s  
8 assertions to the contrary presented in his four grounds for federal habeas corpus  
9 relief are legally frivolous.

10       Because it plainly appears from the petition and accompanying documents  
11 that Petitioner is not entitled to relief in this Court, **IT IS ORDERED** that the  
12 petition, ECF No. 1, is **DISMISSED** pursuant to Rule 4 of the Rules Governing  
13 Section 2254 Cases in the United States District Courts. All pending motions are  
14 **DENIED AS MOOT.**

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