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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 JOHN MICHAEL BALE,

11 Petitioner,

12 v.

13 DONALD HOLBROOK,

14 Respondent.

CASE NO. 3:17-cv-05188-RBL-JRC

ORDER DENYING PETITIONER'S
MOTION TO RECONSIDER THE
COURT'S ORDER

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16 The District Court referred this petition for a writ of habeas corpus to United States
17 Magistrate Judge J. Richard Creatura pursuant to 28 U.S.C. § 636(b)(1)(A) and (B), and local
18 Magistrate Judge Rules MJR3 and MJR4.

19 After this Court ordered respondent to file a supplemental answer and recommended that
20 several of petitioner's claims be dismissed for failure to exhaust, petitioner filed this objection to
21 the order. Dkt. 24. He objects to the Court's recommended dismissal and requests that the claims
22 be considered on the merits even though the Court previously found them to be unexhausted.
23 Though filed as an objection, the Court interprets this as a motion for reconsideration. However,

1 because the Court does not find that it committed manifest error and there are no new facts or
2 legal authority that were not already presented when the Court made its previous ruling, the
3 Court denies the motion.

4 **DISCUSSION**

5 Petitioner requests that the Court reconsider its previous ruling and analyze his
6 ineffective assistance of counsel claim, as well as several other claims, on the merits. Though he
7 styles it as an objection, in light of the request to reevaluate the Court's previous decision, the
8 Court treats this filing as a motion for reconsideration. Motions for reconsideration are
9 disfavored under the Local Rules. *See* Local Rule 7(h). "The Court will ordinarily deny such
10 motions in the absence of a showing of manifest error in the prior ruling or a showing of new
11 facts or legal authority which could not have been brought to its attention earlier with reasonable
12 diligence." *Id.*

13 Petitioner first asks that the Court consider on the merits his ineffective assistance of
14 counsel claim related to his lack of access to the jail law library. Dkt. 24 at 1-2. It is unclear
15 which ineffective assistance claim petitioner is referencing; he raised ineffective assistance of
16 trial counsel in grounds 6, 16, and 20 of his habeas petition, and raised his lack of access to the
17 law library in ground 2. Dkt. 4-1 at 2-5, 11-12, 17-25, 39-40, 45-46. However, the Court
18 recommended dismissal of all of these claims as unexhausted and procedurally defaulted in its
19 previous order. Dkt. 22, 5-7. Petitioner has not presented new facts or legal authority that could
20 not have been brought to the Court's attention earlier indicating this ruling was improper. Local
21 Rule 7(h).

22 Further, there is no indication that the Court committed manifest error. The Court found
23 that, though petitioner included the above noted grounds in his personal restraint petition, he
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1 neglected to present to them at all levels of the state courts. Dkt. 22 at 5. Because of this, the
2 Court determined that it could not review them. Further, it found that the grounds were
3 procedurally defaulted because they could no longer be reviewed by state courts, and therefore
4 recommended dismissal. *Id.* at 5-7. Petitioner urges that his claims have merit and that the Court
5 should consider them. However, regardless of merit, the Court cannot consider claims in a
6 habeas petition unless they have already been exhausted in state court. *Picard v. Connot*, 404
7 U.S. 270, 275 (1971). Because it appears the Court correctly found that petitioner’s above noted
8 grounds were unexhausted, the Court denies petitioner’s motion for reconsideration on this
9 ground.

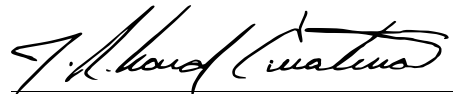
10 Petitioner also asks the Court to reconsider its recommended dismissal of the other claims
11 the Court found to be unexhausted. Dkt. 24 at 3. He argues that the Court incorrectly found these
12 unexhausted because he included them in his statement of additional grounds (“SAG”) in the
13 Washington Court of Appeals, and the Washington Supreme Court are tasked with reviewing
14 “the whole case as a whole not just in part.” *Id.* As the Court noted in its previous order, “a state
15 prisoner must normally exhaust available state judicial remedies before a federal court will
16 entertain his petition for habeas corpus.” *Picard*, 404 U.S. at 275. Further, “[t]o exhaust state
17 remedies, petitioner must present each of his claims to the state’s highest court. In turn, the
18 state’s highest court must have disposed of each claim on the merits.” *James v. Borg*, 24 F.3d 20,
19 24 (9th Cir. 1994) (citing *Carothers v. Rhay*, 594 F.2d 225, 228 (9th Cir. 1979)). Though
20 petitioner claims he raised all his current habeas grounds in his SAG, he presented only four
21 grounds to the Washington Supreme Court for Review. Dkt. 17, Ex. 7 at 1. As noted in the
22 Court’s previous order, those grounds are reflected in five of the grounds presented in
23 petitioner’s habeas petition. However, he did not present his remaining 17 grounds to the
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1 Washington Supreme Court. Because petitioner relies on arguments provided to the Court of
2 Appeals, but not identified when he appealed its decision, it cannot be fairly said that he
3 presented each of his claims to the state's highest court. *Borg*, 24 F.3d at 24. Therefore, the Court
4 did not commit manifest error when it found that petitioner had not exhausted those claims. The
5 Court denies petitioner's motion for reconsideration (Dkt. 24).

6 **CONCLUSION**

7 Petitioner fails to show manifest error in the prior ruling or present new facts or legal
8 authority for his position that could not have been brought to the Court's attention earlier with
9 reasonable diligence. Regardless of the merits of petitioner's ineffective assistance of counsel
10 claim, the Court did not commit manifest error when it determined it was exhausted. Similarly,
11 because petitioner did not present his 17 identified claims to Washington's highest court, this
12 Court did not commit manifest error when it found them unexhausted. Therefore, petitioner's
13 objection, which the Court interprets as a motion for reconsideration (Dkt. 24), is denied.

14 Dated this 11th day of October, 2017.

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17 J. Richard Creatura
18 United States Magistrate Judge
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