

APPENDIX -

A

Appendix A

UNITED STATES COURT OF APPEALS

FILED

FOR THE NINTH CIRCUIT

APR 26 2019

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

JOSE ANTONIO CONTRERAS,

Petitioner-Appellant,

v.

STATE OF WASHINGTON,

Respondent-Appellee.

No. 18-36034

D.C. No. 4:18-cv-05176-RMP
Eastern District of Washington,
Richland

ORDER

Before: O'SCANNLAIN and GOULD, Circuit Judges.

The request for a certificate of appealability is denied because appellant has not shown that “jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.”

Slack v. McDaniel, 529 U.S. 473, 484 (2000); *see also* 28 U.S.C. § 2253(c)(2);

Gonzalez v. Thaler, 565 U.S. 134, 140-41 (2012).

Any pending motions are denied as moot.

DENIED.

APPENDIX -

B

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

Dec 04, 2018

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JOSE ANTONIO CONTRERAS,

Petitioner,

v.

WASHINGTON STATE,

Respondent.

NO: 4:18-CV-5176-RMP

ORDER TO PROCEED *IN FORMA*
PAUPERIS AND ORDER
DISMISSING PETITION

Petitioner, a prisoner at the Airway Heights Corrections Center, seeks to file *in forma pauperis* a *pro se* Petition for Writ of Habeas Corpus by a Person in State Custody pursuant to 28 U.S.C. § 2254. Because it appears Petitioner lacks sufficient funds to prosecute this action, **IT IS ORDERED** that the District Court Clerk shall file the Petition without payment of the filing fee.

There are several deficiencies with Mr. Contreras' petition. First, a petitioner for habeas corpus relief must name the person having custody of him or her as the respondent to the petition. *Rumsfeld v. Padilla*, 542 U.S. 426, 441–42 (2004); *Stanley v. Cal. Sup. Ct.*, 21 F.3d 359, 360 (9th Cir. 1994). If the petitioner

ORDER TO PROCEED *IN FORMA PAUPERIS* AND ORDER DISMISSING
PETITION -- 1

1 is incarcerated, the proper respondent is generally the warden of the institution
2 where petitioner is incarcerated. *See Ortiz-Sandoval v. Gomez*, 81 F.3d 891, 894
3 (9th Cir. 1996). Failure to name a proper respondent deprives federal courts of
4 personal jurisdiction. *See Stanley*, 21 F.3d at 360.

5 EXHAUSTION REQUIREMENT

6 Petitioner is challenging a Benton County conviction and sentence from
7 April 12, 2018. Before a federal court will consider the merits of a writ of habeas
8 corpus pursuant to 28 U.S.C. § 2254, the petitioner must demonstrate that each
9 claim in the petition has been presented for resolution by the state supreme court.
10 *See O'Sullivan v. Boerkel*, 526 U.S. 838, 845 (1999). A state prisoner must
11 exhaust state supreme court remedies with respect to each claim before petitioning
12 for a writ of habeas corpus in federal court. *See Roettgen v. Copeland*, 33 F.3d 36,
13 38 (9th Cir. 1994). The exhaustion requirement protects the role of state courts in
14 enforcing federal law, prevents the disruption of state judicial proceedings, and
15 gives the state's highest court the opportunity to examine and vindicate a right of
16 federal constitutional magnitude. *Rose v. Lundy*, 455 U.S. 509, 518–20 (1982).

17 A claim is considered exhausted when it has been fully and fairly presented
18 to the state Supreme Court for resolution under federal law. *O'Sullivan*, 526 U.S.
19 at 842-43; *Harris v. Pulley*, 852 F.2d 1546, 1569–71 (9th Cir. 1988), *opinion*
20 *amended on other grounds and superseded by* 885 F.2d 1354, *cert. denied*, 493
21 U.S. 1051 (1990). Moreover, each claim raised in the federal petition must be “the

1 substantial equivalent of contentions presented by petitioner to the state courts
2 upon his appeal from conviction.” *Schiers v. People of State of Cal.*, 333 F.2d 173,
3 174 (9th Cir. 1964). It is only then that the exhaustion requirement of 28 U.S.C.
4 § 2254 is fulfilled.

5 Here, Petitioner admits that his appeal of his criminal conviction is pending
6 in the Washington State Court of Appeals, Division III. Because it is obvious from
7 the face of the petition that Mr. Contreras has not fully exhausted his state court
8 remedies, this Court cannot consider his habeas claims and he is not entitled to the
9 relief he seeks. 28 U.S.C. § 2254(b)(1); Rule 4, Rules Governing Section 2254
10 Cases in the United States District Courts; *see also Baldwin v. Reese*, 541 U.S. 27,
11 29 (2004) (citing cases).

12 Therefore, **IT IS ORDERED** the Petition is **DISMISSED without**
13 **prejudice** for failure to exhaust state court remedies. **IT IS FURTHER**
14 **ORDERED** that all pending motions are **DENIED as moot** and all pending
15 deadlines shall be terminated.

16 **IT IS SO ORDERED.** The District Court Clerk is directed to enter this
17 Order, enter judgment, provide copies to Petitioner, and **close the file**. The Court

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1 certifies an appeal from this decision could not be taken in good faith, and there is
2 no basis upon which to issue a certificate of appealability. 28 U.S.C. § 2253(c);
3 Fed. R. App. P. 22(b).

4 **DATED** December 4, 2018.

5
6 *s/ Rosanna Malouf Peterson*
7 ROSANNA MALOUF PETERSON
8 United States District Judge
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