

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

FILED

JUN 17 2025

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

RONALD BUZZARD, Jr.,

Petitioner - Appellant,

v.

JACK WARNER, Superintendent,

Respondent - Appellee.

No. 25-1698

D.C. No. 2:24-cv-01381-BJR  
Western District of Washington,  
Seattle

ORDER

Before: H.A. THOMAS and DESAI, Circuit Judges.

The motion (Docket Entry No. 7) for reconsideration is denied. *See* 9th Cir.

R. 27-10.

No further filings will be entertained in this closed case.

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No. 25-1698

D.C. No. 2:24-cv-01381-BJR  
Western District of Washington,  
Seattle

ORDER

Before: R. NELSON and BUMATAY, 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); *Hayward v. Marshall*, 603 F.3d 546, 552-54 (9th Cir. 2010) (en banc) (habeas challenge to parole decision requires a certificate of appealability when underlying conviction and sentence issued from a state court), *overruled on other grounds by Swarthout v. Cooke*, 562 U.S. 216 (2011).

Any pending motions are denied as moot.

**DENIED.**

Reff. Snday  
1/28/25 Re.

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

RONALD BUZZARD, JR.,

Petitioner,

v.

JACK WARNER,

Respondent.

CASE NO. 2:24-CV-1381-BJR-DWC

REPORT AND RECOMMENDATION

Noting Date: February 6, 2025

The District Court has referred this action to United States Magistrate Judge David W. Christel. Petitioner Ronald Buzzard, Jr., who is under the jurisdiction of the Indeterminate Sentence Review Board (“ISRB”), filed his federal habeas petition, pursuant to 28 U.S.C. § 2254, challenging the ISRB’s 2021 decision denying his release and extending his minimum term of incarceration. *See* Dkt. 7. After review of the relevant record, the Court concludes Petitioner failed to exhaust the sole ground raised in the Petition, but state court remedies remain available. Therefore, the Court recommends an evidentiary hearing not be held, the Petition be denied without prejudice, and a certificate of appealability not be issued.

1       **I.     Background**

2       **A. Factual Background**

3       The Court of Appeals of the State of Washington (“state court of appeals”) summarized  
4       the facts of Petitioner’s case as follows:

5       Ronald Buzzard previously pleaded guilty to first degree rape of a child. He was  
6       sentenced to 123 months to life and released to community custody after about 12  
7       years in prison. After violating his terms of community custody, Buzzard’s release  
7       was revoked, and he was returned to DOC’s custody to serve a new 24-month  
minimum term.

8       While serving his minimum term, the ISRB conducted a releasability hearing.  
9       During the hearing, the ISRB discussed Buzzard’s “index offense” as well as his  
10       subsequent violations. It also discussed Buzzard’s activities while in prison,  
11       community concerns, and where he would live if released. Buzzard was given an  
12       opportunity to speak about a statement made by his counselor and discuss what he  
12       was currently doing and had previously done for his mental health. Additionally,  
12       Buzzard admitted to his index offense for the first time and addressed what he  
12       believed “went wrong” that resulted in him violating his terms of community  
custody.

13       The ISRB extended Buzzard’s minimum term by 24 months. As part of its decision,  
14       it recommended Buzzard receive sex offender treatment, noting that he had not  
15       previously been eligible but likely now was due to his admission of his index  
offense. The End of Sentence Review Committee (ESRC) also recommended  
15       Buzzard’s sex offender classification be increased from a level 1 to a level 3.

16       Following the ISRB’s decision, Buzzard filed a writ of mandamus against the ISRB  
17       requesting that the superior court order his immediate release from custody. He  
18       argued that the ISRB did not have authority to order him to complete sex offender  
treatment a second time and the ESRC improperly raised his sex offender risk level  
from a level 1 to a level 3.

19       The ISRB and DOC together filed a motion to dismiss Buzzard’s petition, arguing  
20       that Buzzard failed to establish a mandatory duty and he had a plain, speedy, and  
adequate remedy at law—a personal restraint petition. The superior court granted  
21       the motion and dismissed Buzzard’s petition, finding Buzzard failed to establish a  
mandatory duty and the ISRB’s decisions were discretionary. The court did not  
make a finding regarding whether Buzzard had a plain, speedy, and adequate  
22       remedy at law.

1 Dkt. 13-1 (Exhibit 25); *Buzzard v. Indeterminate Sentence Rev. Bd.*, 29 Wash. App. 2d 1048,  
2 review denied sub nom. *Buzzard v. I.S.R.B.*, 551 P.3d 442 (Wash. 2024)

3       B. Procedural Background

4           1. *ISRB*

5       On October 8, 2021, the End of Sentence Review Committee (“ESRC”) completed a  
6 report on Petitioner. Dkt. 13-1 (Exhibit 15). The ESRC recommended Petitioner’s sex offender  
7 classification be increased from Level I to Level III. *Id.* (Exhibit 15 at 11). The ISRB held a  
8 releasability hearing and, on December 13, 2021, the ISRB found Petitioner was not releasable  
9 and extended his prison term. *Id.* (Exhibit 16); *see also id.* (Exhibit 24).

10           2. *Writ of Mandamus*

11       On January 11, 2022, Petitioner filed a writ of mandamus in the Superior Court of  
12 Franklin County. Dkt. 13-1 (Exhibit 17). Petitioner argued the ISRB lacked the authority to  
13 require him to attend sex offender treatment and to raise his sex offender risk level. *Id.* On July  
14 5, 2022, the superior court dismissed the writ of mandamus. *Id.* (Exhibit 20). Petitioner appealed  
15 to the state court of appeals on May 2, 2023. *Id.* (Exhibit 21). On February 13, 2024, the state  
16 court of appeals affirmed the superior court’s dismissal of the writ of mandamus. *Id.* (Exhibit  
17 25). Petitioner filed a petition for review in the Washington State Supreme Court (“state supreme  
18 court”). *Id.* (Exhibit 26). On July 10, 2024, the state supreme court denied the petition for review  
19 without comment. *Id.* (Exhibit 27).

20           3. *Federal Petition*

21       On August 30, 2024, Petitioner filed the Petition raising the following ground for relief:

22           1. Denied 5<sup>th</sup> and 14<sup>th</sup> Amendment rights to due process when registration level was  
23           changed with no appeal process resulting in 2-6 extra years incarceration so far.

1 Dkt. 7 at 5; *see also* Dkt. 1. On November 14, 2024, Respondent filed, and served on Petitioner,  
2 an Answer and the relevant state court record. Dkts. 12, 13. Petitioner filed a traverse and  
3 additional records on December 2, 2024 and December 6, 2024. Dkts. 15, 16.<sup>1</sup>

4 **II. Discussion**

5 In the Petition, Petitioner alleges his due process rights were violated when his sex  
6 offender registration level was changed from a Level I to a Level III without an appeal process.  
7 Dkt. 7; *see also* Dkt. 15 at 4. Respondent maintains Petitioner has raised three claims: (1) the  
8 ESRC changed Petitioner's sex offender level without the proper administrative process, (2) the  
9 ESRC failed to consider mitigating factors, and (3) the ESRC added to extra points to  
10 Petitioner's Statute-99B. Dkt. 12. In his Traverse, Petitioner clarified that he is raising one  
11 ground for relief – that his due process rights were violated when he was not given an appeal –  
12 and Petitioner asserts the claims identified by Respondent are facts or subparts supporting his  
13 sole ground for relief. *See* Dkt. 15 at 4. After a review of the relevant records, the Court finds  
14 Petitioner has raised one ground for relief – whether his due process rights were violated when  
15 his classification level was increased from Level I to Level III without an appeal process.

16 **A. Exhaustion**

17 Respondent argues Petitioner's claim is unexhausted and barred from federal review.  
18 Dkt. 12. He also asserts portions of Petitioner's claim is too vague to warrant relief. *Id.*<sup>2</sup>

21 <sup>1</sup> The Court notes Petitioner has filed several other habeas petitions in this Court related to his 2002  
22 conviction and other ISRB decisions. The parties assert, and the Court concurs, this matter is not successive because  
the challenged decision, the 2021 ISRB decision, occurred after his other petitions had already been filed.

23 <sup>2</sup> The Court recognizes that Respondent attempted to separate Petitioner's claim into three claims. Dkt. 12.  
24 Respondent argued claims 1 and 3 were not exhausted and that claim 2 was too vague to state a claim. *Id.* While the  
Court finds Petitioner raised only one ground for relief, the Court finds Respondent has sufficiently raised  
exhaustion.

1        “[A] state prisoner must normally exhaust available state judicial remedies before a  
 2        federal court will entertain his petition for habeas corpus.” *Picard v. Connor*, 404 U.S. 270, 275  
 3        (1971). Petitioner’s claims will be considered exhausted only after “the state courts [have been  
 4        afforded] a meaningful opportunity to consider allegations of legal error without interference  
 5        from the federal judiciary.” *Vasquez v. Hillery*, 474 U.S. 254, 257 (1986). “[S]tate prisoners must  
 6        give the state courts one full opportunity to resolve any constitutional issues by invoking one  
 7        complete round of the State’s established appellate review.” *O’Sullivan v. Boerckel*, 526 U.S.  
 8        838, 845 (1999).  
 9        A federal habeas petitioner must provide the state courts with a fair opportunity to correct  
 10        alleged violations of federal rights. *Duncan v. Henry*, 513 U.S. 364, 365 (1995); *Middleton v.*  
 11        *Cupp*, 768 F.2d 1083, 1086 (9th Cir. 1985) (petitioner “fairly presented” the claim to the state  
 12        supreme court even though the state court did not reach the argument on the merits). It is not  
 13        enough if all the facts necessary to support the federal claim were before the state courts or if a  
 14        somewhat similar state law claim was made. *Duncan*, 513 U.S. at 365-66 (citing *Picard*, 404  
 15        U.S. at 275; *Anderson v. Harless*, 459 U.S. 4 (1982)). Petitioner must include reference to a  
 16        specific federal constitutional guarantee, as well as a statement of the facts entitling Petitioner to  
 17        relief. *Gray v. Netherland*, 518 U.S. 152, 162-163 (1996); *Insyxiengmay v. Morgan*, 403 F.3d  
 18        657, 668 (9th Cir. 2005). Petitioner bears the burden of proving he has exhausted available state  
 19        remedies and retains the burden to prove all facts relevant to the exhaustion requirement. See  
 20        *Rose v. Lundy*, 455 U.S. 509, 520 (1982); 28 U.S.C. § 2254(b)(1)(A).

21        Respondent contends Petitioner failed to raise his claims at each level of the state court  
 22        review process and did not raise the claims as federal constitutional violations. Dkt. 12 at 10. In  
 23        the writ of mandamus, Petitioner requested the state court reverse the ISRB’s decision because  
 24

1 neither the ISRB nor the DOC had the statutory authority to order Petitioner to complete a sex  
2 offender treatment program a second time or to raise Petitioner's sex offender risk level from  
3 Level I to Level III when Petitioner was only ordered to complete treatment once. Dkt. 13-1  
4 (Exhibit 17). Petitioner argued the ISRB had a mandatory duty to release Petitioner to  
5 community custody. *Id.* The state superior court dismissed the writ of mandamus because  
6 Petitioner failed to establish a mandatory duty and a violation of said duty. *Id.* (Exhibit 20). The  
7 state superior court found the ISRB decisions in Petitioner's case were discretionary. *Id.*

8 Petitioner appealed the state superior court's decision. Dkt. 13-1 (Exhibit 21). In his  
9 appeal to the state court of appeals, Petitioner asserted the ESRC violated its mandatory duty  
10 when it changed Petitioner's risk and registration levels without his participation in the actuarial  
11 testing. *Id.* Petitioner also argued his constitutional rights of due process, equal protection, right  
12 to a fair hearing and right to present a defense were violated when he was not afforded an  
13 opportunity to review documents, make objections, and write a statement on the evidence. *Id.*  
14 (Exhibit 21 at 9). The state court of appeals affirmed the dismissal of the writ of mandamus  
15 because Petitioner did not show a mandatory duty to act on the part of either the DOC or the  
16 ISRB. *Id.* (Exhibit 25).

17 Petitioner sought review by the state supreme court. Dkt. 13-1 (Exhibit 26). In his  
18 petition for review, Petitioner alleged the ESRC, ISRB, and DOC violated a mandatory duty and  
19 unconstitutionally changed Petitioner's sex offender registration level from Level I to Level III.

20 *Writ of Mandamus - Ex 17 - Pg. 6 & 10*  
Dkt. 13-1 (Exhibit 26). *Ex 24 - COA - Pg. 4, 6-7, 9, 10, 18*  
*Ex 13-1 - Ex 26 - SCOT - Pg. 3-4, 10-12*

21 Petitioner did not raise Ground 1 at each level of the state court review. While Petitioner  
22 may have raised portions of his claims at some levels of review, he did not fully and fairly  
23 present Ground 1 at each level of review. Moreover, he did not clearly raise Ground 1 as a  
24 violation of federal constitutional law. For example, in his petition for review filed with the state

1 *feed Court  
Violation*  
 2 *Page 79*  
 3 *Ex 26*  
 4 *argued  
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supreme court, Petitioner argued the ESRC, ISRB, and DOC had a mandatory duty to act. He argued the ESRC, ISRB, and DOC violated state law and state statutes. He did not clearly assert a federal constitutional violation and did not raise a constitutional violation in relationship to Ground 1 - his ability to appeal the change to his registration level. To the extent he provided generalized references to constitutional or due process rights, vague references to broad constitutional principles such as due process, equal protection and a fair trial do not satisfy the exhaustion requirement. *Gray*, 518 U.S. at 162; *Hiivala v. Wood*, 195 F.3d 1098, 1106 (9th Cir.1999); *Gatlin v. Madding*, 189 F.3d 882, 888 (9th Cir. 1999).

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Petitioner did not give the state court a full and fair opportunity to determine if a federal constitutional violation occurred when Petitioner was allegedly not afforded an appeal process after his registration level was increased. *See Baldwin v. Reese*, 541 U.S. 27, 29 (2004) ("To provide the State with the necessary 'opportunity,' the prisoner must 'fairly present' his claim in each appropriate state court (including a state supreme court with powers of discretionary review), thereby alerting that court to the federal nature of the claim."); *Ortberg v. Moody*, 961 F.2d 135, 138 (9th Cir. 1992) (finding claims were unexhausted when they were not raised on every level of direct review). Therefore, Ground 1 was not properly exhausted. *WRONG*

B. Available State Remedies

Dkt. 13-1 - Ex 17 - Writ of Mandamus  
 Ex 21 - COA Appeal  
 Dkt. 13-1 - Ex 26 - W.A. 3.4.1., Ex 27 - Denied w/o comment  
 Respondent next argues Petitioner is procedurally defaulted from federal review because no available state court remedies remain. Dkt. 12 at 11-12. Procedural default is distinct from exhaustion in the habeas context. *Franklin v. Johnson*, 290 F.3d 1223, 1230 (9th Cir. 2002). The procedural default rule bars consideration of a federal claim when it is clear the state court has been presented with the federal claim but declined to reach the issue for procedural reasons or it is clear the state court would hold the claim procedurally barred. *Id.* at 1230-31 (citations omitted). If a state procedural rule would now preclude the petitioner from raising his claim at

1 the state level, the claim is considered “procedurally defaulted” and the federal courts are barred  
2 from reviewing the petition on the merits. *Coleman v. Thompson*, 501 U.S. 722, 731-32 (1991);  
3 *O’Sullivan*, 526 U.S. at 845.

4 Respondent asserts that Ground 1 is procedurally defaulted because if Petitioner  
5 attempted to present this claim in a subsequent personal restraint petition (“PRP”), the state court  
6 would find the claims barred by Washington State law. Dkt. 12 at 11. First, Respondent argues  
7 that Washington State imposes a one-year statute of limitations on filing a PRP or other post-  
8 conviction challenges. RCW § 10.73.090. Respondent contends Petitioner’s conviction became  
9 final in 2002 and, thus, he is barred by the one-year limitations period. Dkt. 12 at 11. However,  
10 courts have found “the Washington time-bar statute, RCW § 10.73.090, only applies to collateral  
11 attacks on a judgment and sentence in a criminal case, not an ISRB decision.” *Boot v. Key*, 2020  
12 WL 7753281, at \*3 (W.D. Wash. Dec. 9, 2020), *report and recommendation adopted*, 2020 WL  
13 7714516 (W.D. Wash. Dec. 29, 2020) (internal quotations omitted). Therefore, the Court finds  
14 the Washington time-bar statute does not preclude Petitioner from returning to the state court.

15 —Second, Respondent asserts that, under Washington State law, the state court of appeals  
16 will not consider a second or successive PRP unless the petitioner certifies he has not filed a  
17 previous petition on similar grounds and shows good cause as to why he did not raise the  
18 grounds in the previous PRP. Dkt. 12 at 11; *see also* RCW 10.73.140. While Respondent asserts  
19 Petitioner has already filed a PRP related to the ESRC report at issue in this case, he does not cite  
20 to any records to support this proposition. *See* Dkt. 12 at 11. Further, after reviewing Petitioner’s  
21 writ of mandamus and appeal of the denial of the writ of mandamus, the Court finds the state  
22 court did not indicate it construed the writ of mandamus as a PRP. *See* Dkt. 13-1 (Exhibits 20,  
23 25); *see also* Dkt. 13-1 (Exhibits 17, 21). In fact, in its decision, the state court of appeals  
24

1 acknowledges that the ISRB and DOC argued Petitioner could pursue a PRP on this issue. *Id.*  
2 (Exhibit 25). As such, the Court cannot conclude that Petitioner is unable to file a PRP related to  
3 this issue.

4 For the above stated reasons, the Court finds state court remedies remain available to  
5 Petitioner and, thus, a return to state court does not appear futile.

6 **C. Conclusion**

7 Based on the record before the Court, Petitioner failed to properly exhaust his state  
8 remedies; however, state remedies remain available to him. Accordingly, the undersigned  
9 recommends the Petition be dismissed without prejudice. *See Hill v. Hill*, 2001 WL 34727917  
10 (D. Or. June 29, 2001).<sup>3</sup>

11 **III. Evidentiary Hearing**

12 The decision to hold an evidentiary hearing is committed to the Court's discretion.  
13 *Schriro v. Landrigan*, 550 U.S. 465, 473 (2007). “[A] federal court must consider whether such a  
14 hearing could enable an applicant to prove the petition’s factual allegations, which, if true, would  
15 entitle the applicant to federal habeas relief.” *Id.* at 474. In determining whether relief is  
16 available under 28 U.S.C. § 2254(d)(1), the Court’s review is limited to the record before the  
17 state court. *Cullen*, 563 U.S. at 181-82. A hearing is not required if the allegations would not  
18 entitle Petitioner to relief under §2254(d). *Landrigan*, 550 U.S. at 474. “It follows that if the  
19 record refutes the applicant’s factual allegations or otherwise precludes habeas relief, a district  
20 court is not required to hold an evidentiary hearing.” *Id.* The Court finds it is not necessary to

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22  
23 <sup>3</sup> As the Court recommends this matter be dismissed without prejudice, the Court declines to consider  
24 Respondent’s remaining arguments.

1 hold an evidentiary hearing in this case because, as discussed in this Report and  
2 Recommendation, Petitioner's grounds may be resolved on the existing state court record.

3 **IV. Certificate of Appealability**

4 A petitioner seeking post-conviction relief under 28 U.S.C. § 2254 may appeal a district  
5 court's dismissal of the federal habeas petition only after obtaining a certificate of appealability  
6 (COA) from a district or circuit judge. *See* 28 U.S.C. § 2253(c). "A certificate of appealability  
7 may issue . . . only if the [petitioner] has made a substantial showing of the denial of a  
8 constitutional right." 28 U.S.C. § 2253(c)(2). Petitioner satisfies this standard "by demonstrating  
9 that jurists of reason could disagree with the district court's resolution of his constitutional  
10 claims or that jurists could conclude the issues presented are adequate to deserve encouragement  
11 to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003) (citing *Slack v. McDaniel*,  
12 529 U.S. 473, 484 (2000)). No jurist of reason could disagree with this Court's evaluation of  
13 Petitioner's claim or would conclude the issues presented in the Petition should proceed further.  
14 Therefore, the Court concludes Petitioner is not entitled to a certificate of appealability with  
15 respect to this case.

16 **V. Conclusion**

17 For the above stated reasons, the Court finds the sole ground raised in the Petition is  
18 unexhausted. As there is an available state remedy, the Court recommends the Petition be  
19 dismissed without prejudice. No evidentiary hearing is necessary and a certificate of appealability  
20 should be denied.

21 Objections to this Report and Recommendation, if any, should be filed with the Clerk and  
22 served upon all parties to this suit not later than **fourteen (14) days** from the date on which this  
23 Report and Recommendation is signed. Failure to file objections within the specified time may  
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1 affect your right to appeal. Objections should be noted for consideration on the District Judge's  
2 motions calendar **fourteen (14) days** from the date they are filed. Responses to objections may  
3 be filed by **the day before the noting date**. If no timely objections are filed, the matter will be  
4 ready for consideration by the District Judge on **February 6, 2025**.

5 Dated this 16th day of January, 2025.

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8 David W. Christel  
9 United States Magistrate Judge  
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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

RONALD BUZZARD, JR.,

Petitioner,

V.

JACK WARNER,

**Respondent.**

CASE NO. 2:24-CV-1381-BJR-DWC

**ORDER ADOPTING IN PART  
REPORT AND  
RECOMMENDATION**

## I. INTRODUCTION

This matter is before the Court on Petitioner’s objections to the Report and Recommendation of United States Magistrate Judge David W. Christel (the “Report and Recommendation”). Having reviewed Petitioner’s objections, Respondent’s response thereto, the record of the case, and the relevant legal authority, the Court will adopt, in part, the Report and Recommendation. The reasoning for the Court’s decision follows.

## II. BACKGROUND

Petitioner Ronald Buzzard is under the jurisdiction of the Indeterminate Sentence Review Board (“ISRB”). He filed this federal habeas petition pursuant to 28 U.S.C. § 2254 in September 2024, challenging the ISRB’s decision to deny his release and extend his minimum term of incarceration. *See* Dkt. No. 7. Buzzard previously pled guilty to first degree rape of a

1 child. He was sentenced to 123 months to life and released to community custody after  
2 approximately twelve years in prison. After violating the terms of his community custody,  
3 Buzzard's release was revoked, and he was returned to the custody of the Washington State  
4 Department of Corrections ("WSDOC") to serve a new 24-month minimum term. While serving  
5 this minimum term, the ISRB conducted a releasability hearing and thereafter extended the  
6 minimum term by another 24 months and recommended that Buzzard receive sex offender  
7 treatment. The End of Sentence Review Committee ("ESRC") further recommended that  
8 Buzzard's sex offender classification be increased from level one to level three.

9 Buzzard filed a writ of mandamus in the superior court, Franklin County, for the State  
10 of Washington in January 2022, requesting that the court reverse the ISRB's decision to deny his  
11 release to community custody. The superior court denied Buzzard's petition and he appealed to  
12 the state court of appeals in May 2023. The appellate court affirmed the superior court's  
13 dismissal of the petition and Buzzard then sought review by the Washington supreme court. In  
14 July 2024, the state supreme court denied the petition for review without comment.

15 Thereafter, Buzzard filed the instant federal habeas petition, arguing that he was "denied  
16 [his] 5th and 14th Amendment rights to due process when [his sex offender] registration level  
17 was changed with no appeal process resulting in 2-6 extra years [of] incarceration so far." Dkt.  
18 No. 7 at 6. Respondent answered the petition and argued that it must be dismissed because  
19 Buzzard had not properly exhausted this new "appeal" claim in state court. Respondent further  
20 argued that Buzzard would be procedurally barred by the time limitation in RCW 10.73.090 from  
21 bringing the "appeal" claim in state court so the petition should be dismissed with prejudice.  
22 After reviewing the record, Judge Christal concluded that Buzzard's claim is unexhausted and  
23 therefore barred from federal review at this time. However, Judge Christal also concluded that  
24

1 the time limit in RCW 10.73.090 is inapplicable to ISRB decisions, so it is not a bar to Buzzard  
2 bringing his claim in state court. Thus, Judge Christal recommends that this Court dismiss the  
3 instant petition without prejudice.

4 **III. DISCUSSION**

5 **A. Exhaustion**

6 It is blackletter law that “a state prisoner must normally exhaust available state judicial  
7 remedies before a federal court will entertain his petition for habeas corpus.” *Picard v. Connor*,  
8 404 U.S. 270, 275 (1971). “The exhaustion doctrine seeks to afford the state courts a meaningful  
9 opportunity to consider allegations of legal error without interference from the federal judiciary.”  
10 *Vasquez v. Hillery*, 474 U.S. 254, 257 (1986); *see also, Duncan v. Henry*, 513 U.S. 364, 365  
11 (1995) (A federal habeas petitioner must provide the state courts with a fair opportunity to  
12 correct alleged violations of federal rights). It is not enough if all the facts necessary to support  
13 the federal claim were before the state courts or if a somewhat similar state law claim was made.  
14 *Duncan*, 513 U.S. at 365-66. Rather, a petitioner must include reference to a specific federal  
15 constitutional guarantee, as well as a statement of the facts entitling petitioner to relief. *Gray v.*  
16 *Netherland*, 518 U.S. 152, 162-163 (1996).

17 As stated above, Buzzard’s claim in the instant petition is that his Fifth and Fourteenth  
18 Amendment due process rights were violated when his sex offender registration level was  
19 changed from level one to level three, and he was not given the right to appeal this decision. *See*  
20 Dkt. No. 7 at 6 (“registration level was changed with no appeal process”; “my sex offender  
21 registration level [was changed] from low risk to high risk...[with] no administrative appeal  
22 process”). This claim—lack of appeal process—is very different from the claims he raised in  
23 state court. For instance, at the state appellate level, Buzzard argued that the ISRB violated his  
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1 Fifth and Fourteenth Amendment rights because it did not allow him to *participate* in the ISRB's  
2 decision to modify his registration level. *See* generally Dkt. No. 17 (Appellant's Opening Brief  
3 Pursuant to RAP 10.3(a)) (alleging that the ISRB did not "allow [him] to participate in the  
4 testing that changed his sex offender registration"; the ISRB "failed to allow [him] to 'participate  
5 in' whatever actuarial testing they used to change his registration level"; the ISRB "did not allow  
6 [him] to participate in the methodologies and actuarial testing, psychological exams, static-99  
7 test, and give [him] a chance to dispute incorrect facts they used to aggravate his sex offender  
8 registration level"; he "was not afforded his right to review the documents, make objections to  
9 the facts relied on"; he "was NOT allowed 'to participate in'" the hearing) (capitalization and  
10 underline in original). What Buzzard did not argue is that his constitutional rights were violated  
11 because he was not afforded a right to *appeal* the ISRB's decision after the fact. Therefore,  
12 Buzzard did not give the state court a full and fair opportunity to determine if a federal  
13 constitutional violation occurred when he allegedly was not afforded an appeal process after his  
14 registration level was increased. *See Vasquez*, 474 U.S. at 257 (a claim is exhausted only after  
15 "the state courts [have been afforded] a meaningful opportunity to consider allegations of legal  
16 error without interference from the federal judiciary"); *Rose v. Palmeteer*, 395 F.3d 1108, 1111  
17 (9th Cir. 2005) ("[P]etitioners must plead their claims with considerable specificity before the  
18 state courts in order to satisfy the exhaustion requirement."). Thus, his claim is not properly  
19 exhausted.

20           **B. Procedurally Barred**

21           As stated above, Judge Christel recommended that this Court deny Buzzard's petition  
22 without prejudice because he determined that state court remedies remained available to  
23 Buzzard. Judge Christel made this determination because Respondent incorrectly argued that the  
24

1 one-year time limitation in RCW 10.73.090 barred Buzzard from bringing his new “appeal”  
 2 claim in state court. However, Judge Christel correctly noted that Washington courts have found  
 3 that the time limitation in RCW 10.73.090 is not applicable to ISRB decisions. Therefore, Judge  
 4 Christel determined that RCW 10.73.090 does not preclude Buzzard from returning to state court  
 5 with his claim.

6 In his response to Petitioner’s objections to the Report and Recommendation, Respondent  
 7 concedes that it was an error to cite to RCW 10.73.090’s one-year time limitation and now  
 8 argues that the correct time limitation is RCW 4.16.130’s two-year “catchall” provision, noting  
 9 that Washington courts have “recognized that [petitions] challenging executive agency actions  
 10 involving offenders are subject to the two-year catchall limitations period” found in RCW  
 11 4.16.130. Dkt. No. 19 at 5. Thus, Respondent argues, a petition challenging an ISRB decision to  
 12 extend an offender’s minimum term of confinement must be brought within two years of the  
 13 ISRB’s final written decision. Buzzard agrees that RCW 4.16.130 is the applicable statute of  
 14 limitations. *See* Dkt. No. 18 at 6 (“As RCW 4.16.130 also gives [Buzzard] 2 years on ISRB  
 15 decisions, Buzzard cannot pursue a [petition] on this issue[.]”). This Court also agrees that  
 16 Buzzard is procedurally barred from bringing his “appeal” claim in state court because more than  
 17 two years have passed since the ISRB issued its final decision in December 2021. *See Bretts*, 505  
 18 P.3d 148, 151 (Wn. App. 2022) (dismissing as time barred under RCW 4.16.130 a personal  
 19 restrain petition because petitioner did not file it within two years of the ISRB’s final written  
 20 decision).<sup>1</sup>

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<sup>1</sup> Nor has Buzzard argued actual innocence nor cause and prejudice to overcome procedural default to obtain federal review on the merits.

#### IV. CONCLUSION

Based on the foregoing, the Court concludes that Buzzard's claim is not properly exhausted and is procedurally barred under state law. Therefore, the Court HEREBY ADOPTS, in part, the Report and Recommendation and DISMISSES the petition with prejudice. In addition, this Court concludes that no jurist of reason could disagree with this Court's evaluation of Petitioner's claim or would conclude the issues presented in the petition should proceed further. Therefore, a certificate of appealability is DENIED with respect to this case. The Clerk is respectfully directed to send copies of this order to Petitioner, counsel for Respondent, and to the Hon. David W. Christel.

Dated this 5th day of March 2025.

Barbara Rothstein

Barbara Jacobs Rothstein  
U.S. District Court Judge

**Additional material  
from this filing is  
available in the  
Clerk's Office.**