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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

NORMAN HUBBS,	)	1:08-CV-01355 GSA HC
	)	
Petitioner,	)	ORDER DISMISSING PETITION
	)	
v.	)	ORDER DIRECTING CLERK OF COURT
	)	TO ENTER JUDGMENT AND TERMINATE
	)	ACTION
	)	
PAM AHLIN, Executive Director,	)	ORDER DECLINING ISSUANCE OF
	)	CERTIFICATE OF APPEALABILITY
Respondent.	)	

\_\_\_\_ Petitioner is civilly committed at Coalinga State Hospital pursuant to California’s Sexually Violent Predator Act and is proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. He has filed a consent form indicating consent to the jurisdiction of the Magistrate Judge.

On September 11, 2008, Petitioner filed the instant federal petition in this Court. The petition contains the following grounds for relief:

- (1) “Petitioner has been denied due process protection of the 14th Amendment to the United States Constitution when not provided procedural safeguards and protections of state statutory law”; and
- (2) “Petitioner was denied equal protection of the law provided for by the 14<sup>th</sup> Amendment to

1 the United States Constitution when the California Department of Mental Health (DMH)  
2 failed to lawfully implement and promulgate the “structured screening instrument” and  
3 “standardized assessment protocol” mandated by § 6601(a), (b) and (c) of the California  
Welfare and Institutions Code (WIC) also known as the Sexually Violent Predator Act  
(SVPA).

4 See Petition at 3-4.

## 5 DISCUSSION

### 6 I. Preliminary Review of Petition

7 Rule 4 of the Rules Governing Section 2254 Cases provides in pertinent part:

8 If it plainly appears from the petition and any attached exhibits that the  
9 petitioner is not entitled to relief in the district court, the judge must dismiss the  
petition and direct the clerk to notify the petitioner.

10 The Advisory Committee Notes to Rule 8 indicate that the court may dismiss a  
11 petition for writ of habeas corpus, either on its own motion under Rule 4, pursuant to the  
12 respondent’s motion to dismiss, or after an answer to the petition has been filed.

### 13 II. Exhaustion of State Remedies

14 A petitioner who is in state custody and wishes to collaterally challenge his conviction by a  
15 petition for writ of habeas corpus must exhaust state judicial remedies. 28 U.S.C. § 2254(b)(1). The  
16 exhaustion doctrine is based on comity to the state court and gives the state court the initial  
17 opportunity to correct the state's alleged constitutional deprivations. Coleman v. Thompson, 501  
18 U.S. 722, 731 (1991); Rose v. Lundy, 455 U.S. 509, 518 (1982); Buffalo v. Sunn, 854 F.2d 1158,  
19 1163 (9<sup>th</sup> Cir. 1988).

20 A petitioner can satisfy the exhaustion requirement by providing the highest state court with a  
21 full and fair opportunity to consider each claim before presenting it to the federal court. Duncan v.  
22 Henry, 513 U.S. 364, 365 (1995); Picard v. Connor, 404 U.S. 270, 276 (1971); Johnson v. Zenon, 88  
23 F.3d 828, 829 (9<sup>th</sup> Cir. 1996). A federal court will find that the highest state court was given a full  
24 and fair opportunity to hear a claim if the petitioner has presented the highest state court with the  
25 claim's factual and legal basis. Duncan, 513 U.S. at 365 (legal basis); Kenney v. Tamayo-Reyes, 504  
26 U.S. 1, 112 S.Ct. 1715, 1719 (1992) (factual basis).

27 Additionally, the petitioner must have specifically told the state court that he was raising a  
28 federal constitutional claim. Duncan, 513 U.S. at 365-66; Lyons v. Crawford, 232 F.3d 666, 669

1 (9th Cir.2000), *amended*, 247 F.3d 904 (2001); Hiivala v. Wood, 195 F.3d 1098, 1106 (9<sup>th</sup> Cir.1999);  
2 Keating v. Hood, 133 F.3d 1240, 1241 (9<sup>th</sup> Cir.1998). In Duncan, the United States Supreme Court  
3 reiterated the rule as follows:

4 In Picard v. Connor, 404 U.S. 270, 275 . . . (1971), we said that exhaustion  
5 of state remedies requires that petitioners "fairly presen[t]" federal claims to the  
6 state courts in order to give the State the "opportunity to pass upon and correct  
7 alleged violations of the prisoners' federal rights" (some internal quotation marks  
8 omitted). If state courts are to be given the opportunity to correct alleged violations  
9 of prisoners' federal rights, they must surely be alerted to the fact that the prisoners  
10 are asserting claims under the United States Constitution. If a habeas petitioner  
11 wishes to claim that an evidentiary ruling at a state court trial denied him the due  
12 process of law guaranteed by the Fourteenth Amendment, he must say so, not only  
13 in federal court, but in state court.

14 Duncan, 513 U.S. at 365-366. The Ninth Circuit examined the rule further, stating:

15 Our rule is that a state prisoner has not "fairly presented" (and thus  
16 exhausted) his federal claims in state court *unless he specifically indicated to  
17 that court that those claims were based on federal law*. See Shumway v. Payne,  
18 223 F.3d 982, 987-88 (9th Cir. 2000). Since the Supreme Court's decision in  
19 Duncan, this court has held that the *petitioner must make the federal basis of the  
20 claim explicit either by citing federal law or the decisions of federal courts, even  
21 if the federal basis is "self-evident,"* Gatlin v. Madding, 189 F.3d 882, 889  
22 (9th Cir. 1999) (citing Anderson v. Harless, 459 U.S. 4, 7 . . . (1982), or the  
23 underlying claim would be decided under state law on the same considerations  
24 that would control resolution of the claim on federal grounds. Hiivala v. Wood,  
25 195 F.3d 1098, 1106-07 (9th Cir. 1999); Johnson v. Zenon, 88 F.3d 828, 830-31  
26 (9th Cir. 1996); . . . .

27 In Johnson, we explained that the petitioner must alert the state court to  
28 the fact that the relevant claim is a federal one without regard to how similar the  
state and federal standards for reviewing the claim may be or how obvious the  
violation of federal law is.

19 Lyons v. Crawford, 232 F.3d 666, 668-669 (9th Cir. 2000) (italics added).

20 In this case, Petitioner has failed to present his claims to the state courts before coming to  
21 federal court. Although he challenges a civil commitment, he is still in custody pursuant to a  
22 judgment of a state court and subject to exhaustion requirements. For this reason, the petition must  
23 be dismissed. 28 U.S.C. § 2254(b)(1).

### 24 III. Failure to State a Federal Claim

25 The basic scope of habeas corpus is prescribed by statute. Subsection (c) of Section 2241 of  
26 Title 28 of the United States Code provides that habeas corpus shall not extend to a prisoner unless  
27 he is "in custody in violation of the Constitution."

28 Petitioner's claims arise under California law. First, he claims the California Department of

1 Mental Health failed to abide by procedures required under California law before submitting a  
2 referral to the county district attorney for filing a civil commitment petition. Second, he claims he  
3 was evaluated in a process employing rules and regulations not in compliance with state law as  
4 determined by the California Office of Administrative Law. Such claims involve questions of purely  
5 state law and are not cognizable via § 2241. Estelle v. McGuire, 502 U.S. 62, 67, (1991) ("We have  
6 stated many times that 'federal habeas corpus relief does not lie for errors of state law.' "), *quoting*  
7 Lewis v. Jeffers, 497 U.S. 764, 780 (1990). "[T]he availability of a claim under state law does not of  
8 itself establish that a claim was available under the United States Constitution." Sawyer v. Smith,  
9 497 U.S. 227, 239 (1990), *quoting*, Dugger v. Adams, 489 U.S. 401, 409 (1989); see also 28 U.S.C.  
10 § 2254. Therefore, the petition fails to state a cognizable federal claim and must be dismissed.

11 IV. Certificate of Appealability

12 An individual in state custody seeking a writ of habeas corpus has no absolute entitlement to  
13 appeal a district court's denial of his petition, and an appeal is only allowed in certain circumstances.  
14 Miller-El v. Cockrell, 123 S.Ct. 1029, 1039 (2003). The controlling statute in determining whether  
15 to issue a certificate of appealability is 28 U.S.C. § 2253, which provides as follows:

16 (a) In a habeas corpus proceeding or a proceeding under section 2255 before a  
17 district judge, the final order shall be subject to review, on appeal, by the court  
of appeals for the circuit in which the proceeding is held.

18 (b) There shall be no right of appeal from a final order in a proceeding to test the  
19 validity of a warrant to remove to another district or place for commitment or trial  
20 a person charged with a criminal offense against the United States, or to test the  
validity of such person's detention pending removal proceedings.

21 (c) (1) Unless a circuit justice or judge issues a certificate of appealability, an  
appeal may not be taken to the court of appeals from—

22 (A) the final order in a habeas corpus proceeding in which the  
23 detention complained of arises out of process issued by a State  
court; or

24 (B) the final order in a proceeding under section 2255.

25 (2) A certificate of appealability may issue under paragraph (1) only if the  
26 applicant has made a substantial showing of the denial of a constitutional right.

27 (3) The certificate of appealability under paragraph (1) shall indicate which  
28 specific issue or issues satisfy the showing required by paragraph (2).

If a court denies a petitioner's petition, the court may only issue a certificate of appealability

1 “if jurists of reason could disagree with the district court’s resolution of his constitutional claims or  
2 that jurists could conclude the issues presented are adequate to deserve encouragement to proceed  
3 further.” Miller-El, 123 S.Ct. at 1034; Slack v. McDaniel, 529 U.S. 473, 484 (2000). While the  
4 petitioner is not required to prove the merits of his case, he must demonstrate “something more than  
5 the absence of frivolity or the existence of mere good faith on his . . . part.” Miller-El, 123 S.Ct. at  
6 1040.

7 In the present case, the Court finds that reasonable jurists would not find the Court’s  
8 determination that Petitioner is not entitled to federal habeas corpus relief debatable, wrong, or  
9 deserving of encouragement to proceed further. Petitioner has not made the required substantial  
10 showing of the denial of a constitutional right. Accordingly, the Court hereby **DECLINES** to issue a  
11 certificate of appealability.

12 **ORDER**

13 Accordingly, IT IS HEREBY ORDERED:

- 14 1) The petition for writ of habeas corpus is **DISMISSED WITH PREJUDICE**;  
15 2) The Clerk of Court is **DIRECTED** to enter judgment and terminate the action; and  
16 3) The Court **DECLINES** to issue a certificate of appealability.

17  
18 IT IS SO ORDERED.

19 **Dated: September 30, 2008**

/s/ Gary S. Austin  
UNITED STATES MAGISTRATE JUDGE