

**UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA**

Julian Daniel Romero v. Chance Andes, Warden

Romero · No. 25-cv-07079-YGR (PR) · Decided January 16, 2026

OPINION

1 2 3 4 UNITED STATES DISTRICT COURT 5 NORTHERN DISTRICT OF CALIFORNIA 6 7
JULIAN DANIEL ROMERO, Case No. 25-cv-07079-YGR (PR) 8 Petitioner, ORDER OF
DISMISSAL WITHOUT PREJUDICE 9 v. 10 CHANCE ANDES, Warden, Respondent. 11 12
This action was reassigned from a magistrate judge to the undersigned in light of a Ninth 13
Circuit decision.¹ Petitioner Julian Daniel Romero, who is currently being held at the San Quentin
14 Rehabilitation Center, filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254.

Dkt. 1. 15 He has paid the full filing fee. Dkt. 7. 16 In the instant petition, petitioner did not
exhaust his state remedies by presenting all his 17 claims to the highest level of review—the
California Supreme Court—before filing his petition. 18 See Dkt. 1. Specifically, petitioner raises
a claim under the Racial Justice Act, but the petition 19 indicates he did not present this claim to
the California Supreme Court.

See *id.* at 4. Nothing in 20 the record shows that petitioner pursued this claim by filing a habeas
petition in the California 21 Supreme Court.² 22 Prisoners in state custody who wish to challenge
collaterally in federal habeas proceedings 23 either the fact or length of their confinement are first
required to exhaust state judicial remedies, 24 1 *Williams v. King*, 875 F.3d 500, 503 (9th Cir.

2017) (magistrate judge lacked jurisdiction 25 to dismiss case on initial screening because
unserved defendants had not consented to proceed before magistrate judge). 26 2 The Court
conducted a search of the online docketing system of the state supreme court 27 using petitioner’s
full name. See <https://appellatecases.courtinfo.ca.gov> (last visited Dec. 31, 1 either on direct
appeal or through collateral proceedings, by presenting the highest state court 2 available with a
fair opportunity to rule on the merits of each and every claim they seek to raise in 3 federal court.

See 28 U.S.C. § 2254(b), (c). The exhaustion-of-state-remedies doctrine reflects a 4 policy of
federal-state comity “to give the State an initial ‘opportunity to pass upon and correct’ 5 alleged
violations of its prisoners’ federal rights.” *Picard v. Connor*, 404 U.S. 270, 275 (1971) 6 (citations
omitted).

The exhaustion requirement is satisfied only if the federal claim has been 7 “fairly presented” to
the state courts. See *id.*; *Peterson v. Lampert*, 319 F.3d 1153, 1155-56 (9th 8 Cir. 2003) (en banc).
The state’s highest court must be given an opportunity to rule on the claims 9 even if review is

discretionary. See *O’Sullivan v. Boerckel*, 526 U.S. 838, 845 (1999) (holding 10 that petitioner must invoke “one complete round of the State’s established appellate review 11 process”).

A federal district court must dismiss a federal habeas petition containing any claim as 12 to which state remedies have not been exhausted. See *Rhines v. Weber*, 544 U.S. 269, 273 (2005). 13 Here, nothing in the record shows that petitioner filed a state habeas petition in the 14 California Supreme Court raising his claim under the Racial Justice Act. See Dkt.

1. Petitioner 15 has not submitted any evidence to the contrary. Thus, the Court finds that petitioner has not 16 satisfied the exhaustion requirement by “fairly present[ing]” all his claims in the underlying 17 federal habeas petition to the California Supreme Court, the highest state court with jurisdiction to 18 consider them in a state habeas petition. See *Picard*, 404 U.S. at 275.

19 Petitioner should have brought his claim under the Racial Justice Act before the California 20 Supreme Court to exhaust that claim in state court. Thus, petitioner has not yet exhausted all 21 available procedures if the state supreme court has not had an opportunity to review all his federal 22 claims. “A petitioner must exhaust his state remedies by reaching the point where he has no state 23 remedies available to him at the time he files his federal habeas petition.” See *Peterson*, 319 F.3d 24 at 1156.

Petitioner has failed to file the appropriate state supreme court petition and has not 25 succeeded in “reaching the point where he has no state remedies available to him....” See *id.* 26 Accordingly, the Court DISMISSES the petition as unexhausted without prejudice to refiling once 27 all claims he wishes to raise in federal court have been presented to the California Supreme Court.

1 to refile, he is advised to do so as soon as possible after his state court proceedings have 2 || concluded. The Court makes no ruling at this time on the issue of the timeliness of any future 3 federal petition. 4 The Clerk of the Court shall terminate any pending motions as moot and close the file. 5 IT IS SO ORDERED. 6 || Dated: January 16, 2025 7 ‘a GONZALEZ ROGERS 9 United States District Judge 10 11 12 © 15 16 = 17 Z 18 19 20 21 22 23 24 25 26 27 28