

1 from the petition . . . that the petitioner is not entitled to relief." Rule 4 of the Rules Governing §
2 2254 Cases; Hendricks v. Vasquez, 908 F.2d 490 (9th Cir.1990). Otherwise, the Court will order
3 Respondent to respond to the petition. Rule 5 of the Rules Governing § 2254 Cases.

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

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

17 Additionally, the petitioner must have specifically told the state court that he was raising a
18 federal constitutional claim. Duncan, 513 U.S. at 365-66; Lyons v. Crawford, 232 F.3d 666, 669
19 (9th Cir.2000), *amended*, 247 F.3d 904 (2001); Hiivala v. Wood, 195 F.3d 1098, 1106 (9th Cir.1999);
20 Keating v. Hood, 133 F.3d 1240, 1241 (9th Cir.1998). In Duncan, the United States Supreme Court
21 reiterated the rule as follows:

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

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

1 Our rule is that a state prisoner has not "fairly presented" (and thus
 2 exhausted) his federal claims in state court *unless he specifically indicated to*
 3 *that court that those claims were based on federal law.* See Shumway v. Payne,
 4 223 F.3d 982, 987-88 (9th Cir. 2000). Since the Supreme Court's decision in
 5 Duncan, this court has held that the *petitioner must make the federal basis of the*
 6 *claim explicit either by citing federal law or the decisions of federal courts, even*
 7 *if the federal basis is "self-evident,"* Gatlin v. Madding, 189 F.3d 882, 889
 8 (9th Cir. 1999) (citing Anderson v. Harless, 459 U.S. 4, 7 . . . (1982), or the
 9 underlying claim would be decided under state law on the same considerations
 10 that would control resolution of the claim on federal grounds. Hiiivala v. Wood,
 11 195 F3d 1098, 1106-07 (9th Cir. 1999); Johnson v. Zenon, 88 F.3d 828, 830-31
 12 (9th Cir. 1996);

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

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

18 Upon review of the instant petition for writ of habeas corpus, it appears that Petitioner may
 19 not have presented his grounds to the California Supreme Court. If Petitioner has not presented all
 20 of his claims to the California Supreme Court, the Court cannot proceed to the merits of those
 21 claims. 28 U.S.C. § 2254(b)(1). It is possible, however, that Petitioner has presented his claims to the
 22 California Supreme Court and simply neglected to inform this Court. Thus, Petitioner must inform
 23 the Court if his claims have been presented to the California Supreme Court, and if possible, provide
 24 the Court with a copy of the petition filed in the California Supreme Court, along with a copy of any
 25 ruling made by the California Supreme Court.

26 **ORDER**

27 Accordingly, Petitioner is ORDERED TO SHOW CAUSE why the petition should not be
 28 dismissed for Petitioner's failure to exhaust state remedies. Petitioner is ORDERED to inform the
 Court what claims have been presented to the California Supreme Court within thirty (30) days of
 the date of service of this order. Petitioner is forewarned that failure to follow this order will result
 in dismissal of the petition pursuant to Local Rule 11-110.

IT IS SO ORDERED.

Dated: August 8, 2005
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/s/ Lawrence J. O'Neill
 UNITED STATES MAGISTRATE JUDGE