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**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

WILLIAM ROPER,

Petitioner - Appellant,

v.

ATTORNEY GENERAL STATE OF
NEVADA; et al.,

Respondents - Appellees.

No. 06-15297

D.C. No. CV-03-00512-LRH

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Larry R. Hicks, District Judge, Presiding

Argued and Submitted October 18, 2007
San Francisco, California

Before: ALARCÓN and TALLMAN, Circuit Judges, and DUFFY**, Senior
Judge.

*This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

**The Honorable Kevin Thomas Duffy, Senior United States District Judge
for the Southern District of New York, sitting by designation.

William Roper appeals from the district court's order denying his petition for a writ of habeas corpus on the merits.¹ As to the one claim certified for appeal, Ground 2(C), Mr. Roper contends that he is entitled to relief because he received ineffective assistance of counsel. The Government argues that the district court erred in reaching the merits of Ground 2(C). It contends that Ground 2(C) is unexhausted because it was never fairly presented to the Nevada state courts. We agree with the Government and dismiss. We have jurisdiction under 28 U.S.C. § 1291 and 28 U.S.C. § 2253(a).

I

The district court judge erred in concluding Ground 2(C) was exhausted because it was never fairly presented to the Nevada state courts. In order for a claim to be fairly presented, a petitioner must present the state court with a reference to a specific federal constitutional guarantee, as well as a statement of the facts entitling a petitioner to relief. *Gray v. Netherland*, 518 U.S. 152, 163 (1996)

¹This Court reviews *de novo* the district court's denial of Mr. Roper's habeas corpus petition. See *Shackleford v. Hubbard*, 234 F.3d 1072, 1077 (9th Cir. 2000). The district court's factual findings relevant to its determination are reviewed for clear error. See *Riley v. Payne*, 352 F.3d 1313, 1317 (9th Cir. 2003).

Mr. Roper's petition is governed by the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"). Under AEDPA, "an application of a writ for habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that— (A) the applicant has exhausted the remedies available in the courts of the State." 28 U.S.C. § 2254 (b)(1).

(citation omitted). Mr. Roper's state petition did not include any factual allegations to support his constitutional claims for ineffective assistance of counsel. Under the heading "Whether Counsel Were Ineffective?," Mr. Roper alleged that his trial counsel was ineffective for "fail[ure] [to] offer instructions for petitioner's defense." This conclusory allegation did not permit the Nevada State courts to conduct a meaningful review of Mr. Roper's claims. *See Fields v. Waddington*, 401 F.3d 1018, 1020 (9th Cir. 2005) ("To satisfy the exhaustion requirement, he had . . . to give the State the opportunity to pass upon and correct alleged violations of its prisoners' federal rights.") (quotations omitted). Thus, Mr. Roper's claims were not fairly presented to the Nevada state courts.

Mr. Roper contends that his failure to allege his federal claims with specificity should be excused as a result of his *pro se* status. While *pro se* litigants are held to a more lenient standard for purposes of exhaustion, Mr. Roper's failure to present any facts to the Nevada state courts cannot be excused. *See id.* at 1021 (holding that the *pro se* petitioner did not alert state court of his federal claim, even under the more lenient standard) (citation omitted).

Accordingly, we dismiss the appeal from the denial of habeas corpus relief with instructions that the district court enter an order dismissing the application pursuant to 28 U.S.C. § 2254(a) because Mr. Roper's federal constitutional claim is

unexhausted. *See Pappageorge v. Sumner*, 688 F.2d 1294, 1294 (9th Cir. 1982)
(court dismissed appeal of the denial of a habeas petition and instructed district
court to dismiss the action because petitioner had failed to exhaust state remedies).

DISMISSED WITH INSTRUCTIONS.