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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

TYRANT WALKER,

Petitioner - Appellant,

v.

ROBERT AMBROSELLI,

Respondent - Appellee.

No. 07-55826

D.C. No. CV-07-02834-ABC

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
Audrey B. Collins, Chief Judge, Presiding

Submitted May 24, 2011\*\*

Before: PREGERSON, THOMAS, and PAEZ, Circuit Judges.

California state prisoner Tyrant Walker appeals from the district court's judgment dismissing his 28 U.S.C. § 2254 habeas petition. We have jurisdiction under 28 U.S.C. § 2253, and we vacate and remand to the district court.

Walker contends that the district court erred by summarily dismissing his

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

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

pro se habeas petition as unexhausted, and because his conclusory allegations did not warrant habeas relief. The record indicates that Walker fairly presented his ineffective assistance of counsel claims as federal constitutional issues by referencing the federal constitution and citing to federal case law in his habeas petition before the California Supreme Court. *See Insyxiengmay v. Morgan*, 403 F.3d 657, 668 (9th Cir. 2005). Accordingly, Walker did exhaust his claims.

The district court erred by summarily dismissing Walker’s petition without granting him leave to amend. *See Jarvis v. Nelson*, 440 F.2d 13, 14 (9th Cir. 1971) (“[A]”petition for habeas corpus should not be dismissed without leave to amend unless it appears that no tenable claim for relief can be pleaded were such leave granted.”). Accordingly, we vacate and remand to the district court with instructions to allow Walker to amend his petition.

Walker’s motion for judicial notice is granted. *See Smith v. Duncan*, 297 F.3d 809, 815 (9th Cir. 2002) (judicial notice taken of relevant state court documents with a direct relationship to appeal).

**VACATED and REMANDED.**