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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

WILLIAM ROBERT STANKEWITZ, JR.,)	1:08-CV-00133 OWW GSA HC
Petitioner,)	
v.)	FINDINGS AND RECOMMENDATION
ANTHONY HEDGPETH, Warden,)	
Respondent.)	

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

On September 7, 2006, Petitioner filed a federal petition for writ of habeas corpus in this Court. This petition has been assigned case number “1:06-CV-01220 LJO TAG HC,” and is currently in the briefing stage. The petition challenges Petitioner’s 2003 convictions in the Madera County Superior Court for gross vehicular manslaughter, driving under the influence causing bodily injury, and driving with a blood alcohol level of .08 or higher causing great bodily injury.

On January 28, 2008, Petitioner filed a second federal petition for writ of habeas corpus in this Court. This petition has been assigned case number “1:08-CV-00133 OWW GSA HC.” This petition also challenges Petitioner’s 2003 convictions out of Madera County Superior Court.

1 “After weighing the equities of the case, the district court may exercise its discretion to
2 dismiss a duplicative later-filed action, to stay that action pending resolution of the previously filed
3 action, to enjoin the parties from proceeding with it, or to consolidate both actions.” Adams v.
4 California Dept. of Health Services, 487 F.3d 684, 688 (9th Cir. 2007). “Plaintiffs generally have
5 ‘no right to maintain two separate actions involving the same subject matter at the same time in the
6 same court and against the same defendant.’” Adams, 487 F.3d at 688 (quoting Walton v. Eaton
7 Corp., 563 F.2d 66, 70 (3d Cir. 1977) (en banc)).

8 In assessing whether a second action is duplicative of the first, the court examines whether
9 the causes of action and relief sought, as well as the parties or privies to the action, are the same.
10 Adams, 487 F.3d at 689. First, the court must examine whether the causes of action in the two suits
11 are identical pursuant to the transaction test, developed in the context of claim preclusion. Id.
12 Second, the court determines whether the defendants are the same or in privity. Privity includes an
13 array of relationships which fit under the title of “virtual representation.” Kourtis v. Cameron, 419
14 F.3d 989, 996 (9th Cir. 2005). “The necessary elements of virtual representation are an identity of
15 interests and adequate representation.” Adams, 487 F.3d at 691 (citing Kourtis, 419 F.3d at 996).
16 “Additional features of a virtual representation relationship include a close relationship, substantial
17 participation, and tactical maneuvering.” Adams, 487 F.3d at 691 (quoting Kourtis, 419 F.3d at
18 996).

19 A plaintiff is required to bring at one time all of the claims against a party or privies relating
20 to the same transaction or event. Adams, 487 F.3d at 693. The court has discretion to dismiss a
21 duplicative complaint with prejudice to prevent a plaintiff from “fragmenting a single cause of action
22 and litigating piecemeal the issues which could have been resolved in one action.” Adams, 487 F.3d
23 at 694 (quoting Flynn v. State Bd. of Chiropractic Exam'rs, 418 F.2d 668, 668 (9th Cir.1969) (per
24 curiam)).

25 Because the instant petition challenges the same convictions as the petition currently pending
26 in case number “1:06-CV-01220 LJO TAG HC,” the instant petition must be dismissed as
27 duplicative. To the extent Petitioner seeks to pursue his remedies with respect to the underlying
28 convictions, he must do so in the original case.

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RECOMMENDATION

Accordingly, the Court RECOMMENDS that the Petition for Writ of Habeas Corpus be DISMISSED as duplicative.

This Findings and Recommendation is submitted to the Honorable Oliver W. Wanger, United States District Court Judge, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 72-304 of the Local Rules of Practice for the United States District Court, Eastern District of California. Within ten (10) court days (plus three days if served by mail) after being served with a copy, any party may file written objections with the court and serve a copy on all parties. Such a document should be captioned “Objections to Magistrate Judge’s Findings and Recommendation.” Replies to the objections shall be served and filed within ten (10) court days (plus three days if served by mail) after service of the objections. The Court will then review the Magistrate Judge’s ruling pursuant to 28 U.S.C. § 636 (b)(1)(C). The parties are advised that failure to file objections within the specified time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

IT IS SO ORDERED.

Dated: February 7, 2008

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE