

1 resentence him based on (1) Proposition 36;¹ (2) Proposition 47;² (3) People v.
2 Vargas, 59 Cal. 4th 635 (2014);³ and (4) People v. Chiu, 59 Cal. 4th 155 (2014).⁴

3 As the Petition was deficient in multiple respects, the assigned Magistrate
4 Judge issued an order advising petitioner of such deficiencies, ordering him to
5 show cause by not later than April 20, 2015, why the Petition should not be
6 dismissed based thereon, and affording him an opportunity to file a first amended
7 petition for writ of habeas corpus curing such deficiencies by the foregoing
8 deadline (“Order to Show Cause”).⁵ The Order to Show Cause expressly cautioned
9 petitioner that the failure timely to respond thereto may result in the dismissal of
10 the Petition based upon the deficiencies identified therein, and/or the dismissal of
11 this action based upon petitioner’s failure to prosecute and/or petitioner’s failure to
12 comply with the Order to Show Cause.

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15 ¹Proposition 36, also known as the Three Strikes Reform Act of 2012, which was enacted
16 on November 6, 2012, and became effective the following day, modified California’s Three Strikes
17 Law, codified at California Penal Code sections 667 and 1710.12, as it applies to certain third-strike
indeterminate sentences. See Cal. Penal Code § 1170.126.

18 ²Proposition 47, also known as the Safe Neighborhoods and Schools Act, which was enacted
19 on November 4, 2014, and became effective the following day, created a new resentencing
20 provision, California Penal Code section 1170.18, under which certain individuals may petition the
superior court for a recall of sentence and request resentencing. See Cal. Penal Code § 1170.18.

21 ³In People v. Vargas, the California Supreme Court essentially held that two prior
22 convictions arising out of a single act committed at the same time, against a single victim cannot
constitute two strikes under California’s Three Strikes Law. 59 Cal. 4th at 637.

23 ⁴In People v. Chiu, the California Supreme Court held that an aider and abetter may not be
24 convicted of first degree premeditated murder under the natural and probable consequences doctrine.
25 59 Cal. 4th at 166-67. As petitioner is apparently in custody based on a grand theft conviction –
not a murder conviction – it is not clear how People v. Chiu aids his cause.

26 ⁵More specifically, the Magistrate Judge advised petitioner, albeit in greater detail and with
27 citation to authorities, that the Petition, among other things: (i) had not been submitted on a proper
28 form; (ii) was not signed under penalty of perjury/verified; (iii) appeared to raise only non-
cognizable state law claims; and (iv) failed to name a proper respondent.


1 Although the deadline to respond to the Order to Show Cause has now
2 expired, petitioner has not responded thereto. Nor has petitioner filed a first
3 amended petition for writ of habeas corpus, or otherwise communicated with the
4 Court since before the issuance of the Order to Show Cause.

5 It is well-established that district courts have authority to dismiss an action
6 because of the failure to prosecute or to comply with court orders. See Fed. R. Civ.
7 P. 41(b); Link v. Wabash R.R., 370 U.S. 626, 629-30 (1962); Ferdik v. Bonzelet,
8 963 F.2d 1258, 1260 (9th Cir.), cert. denied, 506 U.S. 915 (1992). In determining
9 whether to dismiss an action for failure to prosecute or failure to comply with court
10 orders, a district court must consider several factors: (1) the public's interest in
11 expeditious resolution of litigation; (2) the court's need to manage its docket; (3)
12 the risk of prejudice to defendants/respondents; (4) the public policy favoring
13 disposition of cases on their merits; and (5) the availability of less drastic
14 alternatives. See In re Eisen, 31 F.3d 1447, 1451 (9th Cir. 1994)
15 (failure to prosecute); Ferdik, 963 F.2d at 1260-61 (failure to comply with court
16 orders).

17 In light of petitioner's failure to comply with or to respond to the Order to
18 Show Cause, his failure to cure the deficiencies in the Petition after having been
19 given an opportunity to do so, and his corresponding failure to prosecute, and after
20 weighing each of the above-referenced factors, this Court concludes that dismissal
21 of the Petition and this action without prejudice is appropriate.

22 IT IS SO ORDERED.

23 DATED: July 13, 2015

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26 HONORABLE STEPHEN V. WILSON
27 UNITED STATES DISTRICT JUDGE
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