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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SEAVON PIERCE,)	No. EDCV 10-820-VAP(CW)
)	
Petitioner,)	ORDER OF DISMISSAL
)	
v.)	
)	
HEDGEPEETH (WARDEN),)	
)	
Respondent.)	
_____)	

The present habeas corpus petition was filed on June 3, 2010. The pro se petitioner is a prisoner in state custody pursuant to a 2006 conviction in California Superior Court, Riverside County, Case No. SWF 002212. The validity of this conviction (and sentence) is the subject of a habeas petition filed by Petitioner under 28 U.S.C. § 2254 which is still pending in this court as Pierce v. Sullivan, No. EDCV 09-310-VAP(CW). The present petition is the third filed by Petitioner in this court which challenges the same conviction and sentence.¹

¹ On April 29, 2010, judgment was entered dismissing the second (continued...)

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2 **DISCUSSION**

3 A federal district court may entertain a habeas petition on
4 behalf of a person who is in custody under a state court judgment and
5 in violation of the Constitution, laws, or treaties of the United
6 States. 28 U.S.C. 2254(a). The court need neither grant the writ nor
7 order a return if it appears from the petition that the petitioner is
8 not entitled to relief. 28 U.S.C. § 2243; Rule 4, Rules Governing
9 Section 2254 Cases, 28 foll. § 2254. A federal habeas petitioner is
10 required to "specify all the grounds for relief which are available to
11 the petitioner" and should address the judgment or judgments of a
12 single state court. Rule 2(c)-(d), 28 foll. § 2254. If a petition
13 does not substantially comply with Rule 2 it may be rejected with a
14 statement of the reason for its rejection. Rule 2(e), 28 foll.
15 § 2254. A petition may be amended or supplemented as provided by
16 rule. 28 U.S.C. 2242; Rule 11, 28 foll. § 2254; Rule 15, Federal
17 Rules of Civil Procedure.

18 Under the applicable rules and statutes, Petitioner should have
19 included all of his claims for federal habeas relief from the same
20 state conviction in his prior and pending petition. There is no
21 indication that Petitioner has any claims, cognizable on federal
22 habeas review, that could be raised in the present action but not in
23

24 ¹ (...continued)
25 petition filed by Petitioner challenging this conviction, Pierce v.
26 Hedgpeth (Warden), Case No. EDCV 10-474-VAP (CW), as duplicative,
27 without prejudice to Petitioner filing a motion for leave to amend in
28 Case No. EDCV 09-310. The Ninth Circuit denied Petitioner a
certificate of appealability on June 15, 2011. To date, Petitioner
has not filed a motion for leave to amend (or supplement) his Petition
in Case No. EDCV 09-310.

1 No. EDCV 09-310. Rather than filing the present new petition,
2 Petitioner should have filed a motion for leave to amend in No. EDCV
3 09-310. There is no evident reason why he cannot now move to amend
4 the prior petition in order to include the new claims, provided that
5 he has met the other requirements for presenting habeas claims in
6 federal court, such as the requirement of first exhausting state court
7 remedies, see 28 U.S.C. § 2254(b)-(c), and the statute of limitations
8 at 28 U.S.C. § 2244(d). If Petitioner is able to amend the pending
9 petition in Case No. EDCV 09-310 to include any new claims from the
10 present petition, the new claims would receive the same consideration
11 that they would if presented in a separate action.

12 The court has discretion to dismiss a pleading "that merely
13 repeats pending or previously litigated claims." Cato v. United
14 States, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995). The present petition
15 can, at most, only repeat claims that have been or should have been
16 raised in Petitioner's pending, previously filed action. Therefore,
17 the present petition should be summarily dismissed.

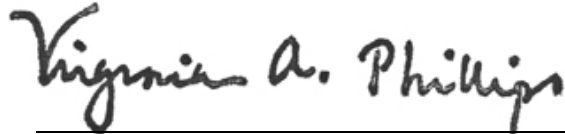
18 If Petitioner wants to litigate his new claims, he should file,
19 in Case NO. EDCV 09-310, a motion for leave to amend in which he
20 clearly identifies the new claims he seeks to add, and shows that they
21 are exhausted and timely.

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ORDERS:

It is therefore **ORDERED** that judgment be entered dismissing this action as duplicating Case No. EDCV 09-310. Dismissal is without prejudice to filing a motion for leave to amend in No. EDCV 09-310.

DATED: September 13, 2011



VIRGINIA A. PHILLIPS
United States District Judge

Presented by:
Dated: September 12, 2011



CARLA M. WOHRLE
United States Magistrate Judge