

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

MOODY WOODROW TANKSLEY,

CASE NO. 1:08-cv-00442-OWW-DLB (PC)

Plaintiff,

FINDINGS AND RECOMMENDATIONS
RECOMMENDING DISMISSAL OF ACTION
FOR FAILURE TO OBEY A COURT ORDER
AND FAILURE TO STATE A CLAIM

v.

AVENAL STATE PRISON, et al.,

(Doc. 14)

Defendants.

/ OBJECTION DUE WITHIN TWENTY DAYS

Plaintiff Moody Woodrow Tanksley ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. On February 18, 2009, the Court screened Plaintiff's first amended complaint and ordered that Plaintiff file a second amended complaint within thirty days from the date of service of the order. (Doc. 14.) More than thirty days have passed and Plaintiff has not filed a second amended complaint or otherwise responded to the court's order.

Local Rule 11-110 provides that "failure of counsel or of a party to comply with these Local Rules or with any order of the Court may be grounds for the imposition by the Court of any and all sanctions . . . within the inherent power of the Court." District courts have the inherent power to control their dockets and "in the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal of a case." Thompson v. Housing Auth., 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party's failure to prosecute an action, failure to obey a court order, or failure to comply with local rules.

1 See, e.g. Ghazali v. Moran, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance with
2 local rule); Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to
3 comply with an order requiring amendment of complaint); Carey v. King, 856 F.2d 1439, 1440-
4 41 (9th Cir. 1988) (dismissal for failure to comply with local rule requiring pro se plaintiffs to
5 keep court apprised of address); Malone v. U.S. Postal Service, 833 F.2d 128, 130 (9th Cir.
6 1987) (dismissal for failure to comply with court order); Henderson v. Duncan, 779 F.2d 1421,
7 1424 (9th Cir. 1986) (dismissal for failure to lack of prosecution and failure to comply with local
8 rules).

9 In determining whether to dismiss an action for lack of prosecution, failure to obey a
10 court order, or failure to comply with local rules, the court must consider several factors: (1) the
11 public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket;
12 (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on
13 their merits; and (5) the availability of less drastic alternatives. Thompson, 782 F.2d at 831;
14 Henderson, 779 F.2d at 1423-24; Malone, 833 F.2d at 130; Ferdik, 963 F.2d at 1260-61; Ghazali,
15 46 F.3d at 53.

16 In the instant case, the court finds that the public's interest in expeditiously resolving this
17 litigation and the court's interest in managing the docket weigh in favor of dismissal, as this case
18 has been pending since June 30, 2008. The third factor, risk of prejudice to defendant, also
19 weighs in favor of dismissal, since a presumption of injury arises from the occurrence of
20 unreasonable delay in prosecuting an action. Anderson v. Air West, 542 F.2d 522, 524 (9th Cir.
21 1976). The fourth factor -- public policy favoring disposition of cases on their merits -- is greatly
22 outweighed by the factors in favor of dismissal discussed herein. Finally, a Court's warning to a
23 party that his failure to obey the court's order will result in dismissal satisfies the "consideration
24 of alternatives" requirement. Ferdik v. Bonzelet, 963 F.2d at 1262; Malone, 833 at 132-33;
25 Henderson, 779 F.2d at 1424. The Court's order expressly stated, "if Plaintiff fails comply with
26 this order, this action will be dismissed for failure to obey a court order and for failure to state a
27 claim." Thus, Plaintiff had adequate warning that dismissal would result from his
28 noncompliance with the court's order.

