

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ROGELIO GALICIA VARGAS,) 1:09-cv-00842-SKO-HC
)
Petitioner,) ORDER DISMISSING THE ACTION
) WITHOUT PREJUDICE FOR
) PETITIONER'S FAILURE TO PROSECUTE
v.)
) ORDER DIRECTING THE CLERK TO
WARDEN J. E. SUGRUE,) CLOSE THE CASE
)
Respondent.)
)
)

Petitioner is a federal prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. Pursuant to the parties' consent, the matter has been referred to the Magistrate Judge for all proceedings, including the entry of final judgment, pursuant to 28 U.S.C. § 636(c), Fed. R. Civ. P. 73(b), and Local Rule 301.¹

I. Petitioner's Failure to Inform the Court of His Address

On April 14, 2010, the Court issued an order reassigning the present proceeding to the undersigned Magistrate Judge, and the

¹ Respondent's counsel filed a signed consent form on May 24, 2010, and Petitioner most recently filed a signed consent form on October 13, 2009.

1 order was served on Petitioner. On April 26, 2010, the order
2 served on Petitioner was returned by the U.S. Postal Service as
3 undeliverable and with a notation "not in custody."

4 Pursuant to Local Rule 183(b), a party appearing in propria
5 persona is required to keep the Court apprised of his or her
6 current address at all times. Local Rule 183(b) provides, in
7 pertinent part:

8 If mail directed to a plaintiff in propria
9 persona by the Clerk is returned by the U.S.
10 Postal Service, and if such plaintiff fails
11 to notify the Court and opposing parties
12 within sixty-three (63) days thereafter of a
13 current address, the Court may dismiss the
14 action without prejudice for failure to
15 prosecute.

16 In the instant case, more than sixty-three days (63) have
17 passed since Petitioner's mail was returned, and he has not
18 notified the Court of a current address.

19 In determining whether to dismiss an action for lack of
20 prosecution, the Court must consider several factors: (1) the
21 public's interest in expeditious resolution of litigation; (2)
22 the Court's need to manage its docket; (3) the risk of prejudice
23 to the respondents; (4) the public policy favoring disposition of
24 cases on their merits; and (5) the availability of less drastic
25 alternatives. Henderson v. Duncan, 779 F.2d 1421, 1423 (9th Cir.
26 1986); Carey v. King, 856 F.2d 1439 (9th Cir. 1988). The Court
27 finds that the public's interest in expeditiously resolving this
28 litigation and the Court's interest in managing the docket weigh
in favor of dismissal because this case has been pending since
May 13, 2009. The Court cannot hold this case in abeyance
indefinitely based on Petitioner's failure to notify the Court of

1 his address. The third factor, risk of prejudice to respondents,
2 also weighs in favor of dismissal, since a presumption of injury
3 arises from the occurrence of unreasonable delay in prosecuting
4 an action. Anderson v. Air West, 542 F.2d 522, 524 (9th Cir.
5 1976). The fourth factor, public policy favoring disposition of
6 cases on their merits, is greatly outweighed by the factors in
7 favor of dismissal discussed herein. Finally, given the Court's
8 inability to communicate with Petitioner based on Petitioner's
9 failure to keep the Court apprised of his current address, no
10 lesser sanction is feasible.

II. Disposition

12 Accordingly, the action is DISMISSED without prejudice for
13 Petitioner's failure to prosecute.

14 The Clerk is DIRECTED to close the case because this order
15 terminates the action in its entirety.

17 IT IS SO ORDERED.

18 || Dated: July 12, 2010

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE