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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

RIGOBERTO VARGAS CASILLAS,	)	1:10-cv-00471-SMS-HC
	)	
Petitioner,	)	ORDER DISMISSING THE PETITION AS
	)	DUPLICATIVE (Doc. 1)
	)	
v.	)	ORDER DECLINING TO ISSUE A
	)	CERTIFICATE OF APPEALABILITY
JAMES WALKER,	)	
	)	ORDER DIRECTING THE CLERK TO
Respondent.	)	CLOSE THE ACTION
	)	
_____	)	

Petitioner is a state prisoner proceeding pro se and in forma pauperis with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Pursuant to 28 U.S.C. § 636(c)(1), Petitioner has consented to the jurisdiction of the United States Magistrate Judge to conduct all further proceedings in the case, including the entry of final judgment, by manifesting consent in a signed writing filed by Petitioner on April 7, 2010 (doc. 3). Pending before the Court is the petition, which was filed on March 16, 2010.

I. Screening the Petition

Rule 4 of the Rules Governing § 2254 Cases in the United

1 States District Courts (Habeas Rules) requires the Court to make  
2 a preliminary review of each petition for writ of habeas corpus.  
3 The Court must summarily dismiss a petition "[i]f it plainly  
4 appears from the petition and any attached exhibits that the  
5 petitioner is not entitled to relief in the district court...."  
6 Habeas Rule 4; O'Bremski v. Maass, 915 F.2d 418, 420 (9th Cir.  
7 1990); see also Hendricks v. Vasquez, 908 F.2d 490 (9th Cir.  
8 1990). Habeas Rule 2(c) requires that a petition 1) specify all  
9 grounds of relief available to the Petitioner; 2) state the facts  
10 supporting each ground; and 3) state the relief requested.  
11 Notice pleading is not sufficient; rather, the petition must  
12 state facts that point to a real possibility of constitutional  
13 error. Rule 4, Advisory Committee Notes, 1976 Adoption;  
14 O'Bremski v. Maass, 915 F.2d at 420 (quoting Blackledge v.  
15 Allison, 431 U.S. 63, 75 n. 7 (1977)). Allegations in a petition  
16 that are vague, conclusory, or palpably incredible are subject to  
17 summary dismissal. Hendricks v. Vasquez, 908 F.2d 490, 491 (9th  
18 Cir. 1990).

19 Further, the Court may dismiss a petition for writ of habeas  
20 corpus either on its own motion under Habeas Rule 4, pursuant to  
21 the respondent's motion to dismiss, or after an answer to the  
22 petition has been filed. Advisory Committee Notes to Habeas Rule  
23 8, 1976 Adoption; see, Herbst v. Cook, 260 F.3d 1039, 1042-43  
24 (9th Cir. 2001).

## 25 II. Duplicative Petitions

### 26 A. Background

27 Petitioner, an inmate of the California State Prison at  
28 Sacramento, is serving a sentence of twenty-five years to life

1 for murder imposed by the Kern County Superior Court in case  
2 number BF119960. (Pet. 28.) In the petition, he challenges his  
3 murder conviction on various grounds, including a violation of  
4 the Fourth Amendment's protection against unreasonable searches  
5 and seizures, insufficiency of the evidence to support or  
6 constitute a factual basis for Petitioner's plea of guilty to  
7 murder, ineffective assistance of counsel in multiple respects,  
8 delay in arraignment, and failure to disclose unspecified  
9 material evidence. (Pet. 6-25.)

10 Petitioner has previously filed another petition concerning  
11 this conviction. The Court takes judicial notice of its docket  
12 in Rigoberto Vargas Casillas v. Martel, Warden, case number 1:10-  
13 cv-00139-MJS.<sup>1</sup> In that petition, Petitioner challenges the same  
14 murder conviction. (Ans., doc. 33, 10.) Petitioner raises many  
15 of the same issues as in the later petition that is the subject  
16 of this order. (Id. at 18-26.) An answer was filed on September  
17 2, 2010 in that proceeding. (Doc. 33.) The case thus appears to  
18 be ready for decision.

19 B. Legal Standards

20 "After weighing the equities of the case, the district court  
21 may exercise its discretion to dismiss a duplicative, later-filed  
22 action, to stay that action pending resolution of the previously  
23 filed action, to enjoin the parties from proceeding with it, or  
24 to consolidate both actions." Adams v. California Dept. of  
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26 <sup>1</sup>The Court may take judicial notice of court records. Fed. R. Evid.  
27 201(b); United States v. Bernal-Obeso, 989 F.2d 331, 333 (9<sup>th</sup> Cir. 1993);  
28 Valerio v. Boise Cascade Corp., 80 F.R.D. 626, 635 n. 1 (N.D. Cal. 1978),  
aff'd, 645 F.2d 699 (9<sup>th</sup> Cir. 1981).

1 Health Services, 487 F.3d 684, 688 (9th Cir. 2007). "Plaintiffs  
2 generally have 'no right to maintain two separate actions  
3 involving the same subject matter at the same time in the same  
4 court and against the same defendant.'" Adams, 487 F.3d at 688  
5 (quoting Walton v. Eaton Corp., 563 F.2d 66, 70 (3d Cir. 1977))  
6 (en banc).

7 In assessing whether a second action is duplicative of the  
8 first, the Court examines whether the causes of action, relief  
9 sought, and the parties or privies to the action are the same.  
10 Adams, 487 F.3d at 689.

11 First, the Court must examine whether the causes of action  
12 in the two suits are identical pursuant to the transaction test,  
13 developed in the context of claim preclusion. Id. at 689.  
14 "Whether two events are part of the same transaction or series  
15 depends on whether they are related to the same set of facts and  
16 whether they could conveniently be tried together." Id. In  
17 applying the transaction test, the Court examines four criteria:  
18 1) whether rights or interests established in the prior judgment  
19 would be destroyed or impaired by prosecution of the second  
20 action; 2) whether substantially the same evidence is presented  
21 in the two actions; 3) whether the two suits involve infringement  
22 of the same right; and 4) whether the two suits arise out of the  
23 same transactional nucleus of facts.

24 Second, the Court determines whether the respondents are the  
25 same or in privity. Privity includes an array of relationships  
26 which fit under the title of "virtual representation," the  
27 necessary elements of which are an identity of interests and  
28 adequate representation." Adams, 487 F.3d at 691. "Additional

1 features of a virtual representation relationship include a close  
2 relationship, substantial participation, and tactical  
3 maneuvering.” Adams, 487 F.3d at 691.

4 A plaintiff is required to bring at one time all of the  
5 claims against a party or privies relating to the same  
6 transaction or event. Adams, 487 F.3d at 693-94. The Court has  
7 discretion to dismiss a duplicative complaint with prejudice in  
8 order to promote judicial economy and the comprehensive  
9 disposition of litigation, protect the parties from vexatious and  
10 expensive litigation, and serve the societal interest in bringing  
11 an end to disputes. Adams, 487 F.3d at 692.

#### 12 C. Analysis

13 The instant petition challenges the same conviction as that  
14 being litigated in the previously filed and currently pending  
15 petition in case number 1:10-cv-00139-MJS. Petitioner also seeks  
16 the same relief. The issues have been joined and briefed in the  
17 other proceeding, which appears to be ready for decision.

18 Therefore, the Court will exercise its discretion to dismiss  
19 the instant petition as duplicative. To the extent that  
20 Petitioner seeks to pursue his remedies with respect to the  
21 judgment in question, Petitioner must do so in the original case.

#### 22 III. Certificate of Appealability

23 Unless a circuit justice or judge issues a certificate of  
24 appealability, an appeal may not be taken to the court of appeals  
25 from the final order in a habeas proceeding in which the  
26 detention complained of arises out of process issued by a state  
27 court. 28 U.S.C. § 2253(c)(1)(A); Miller-El v. Cockrell, 537  
28 U.S. 322, 336 (2003). A certificate of appealability may issue

1 only if the applicant makes a substantial showing of the denial  
2 of a constitutional right. § 2253(c)(2). Under this standard, a  
3 petitioner must show that reasonable jurists could debate whether  
4 the petition should have been resolved in a different manner or  
5 that the issues presented were adequate to deserve encouragement  
6 to proceed further. Miller-El v. Cockrell, 537 U.S. at 336  
7 (quoting Slack v. McDaniel, 529 U.S. 473, 484 (2000)). A  
8 certificate should issue if the Petitioner shows that jurists of  
9 reason would find it debatable whether the petition states a  
10 valid claim of the denial of a constitutional right and that  
11 jurists of reason would find it debatable whether the district  
12 court was correct in any procedural ruling. Slack v. McDaniel,  
13 529 U.S. 473, 483-84 (2000). In determining this issue, a court  
14 conducts an overview of the claims in the habeas petition,  
15 generally assesses their merits, and determines whether the  
16 resolution was debatable among jurists of reason or wrong. Id.  
17 It is necessary for an applicant to show more than an absence of  
18 frivolity or the existence of mere good faith; however, it is not  
19 necessary for an applicant to show that the appeal will succeed.  
20 Miller-El v. Cockrell, 537 U.S. at 338.

21 A district court must issue or deny a certificate of  
22 appealability when it enters a final order adverse to the  
23 applicant. Rule 11(a) of the Rules Governing Section 2254 Cases.

24 Here, it does not appear that reasonable jurists could  
25 debate whether the petition should have been resolved in a  
26 different manner. Petitioner has not made a substantial showing  
27 of the denial of a constitutional right. Accordingly, the Court  
28 will decline to issue a certificate of appealability.

1 IV. Disposition

2 Accordingly, it is ORDERED that:

3 1) The petition is DISMISSED with prejudice as duplicative;  
4 and

5 2) The Court DECLINES to issue a certificate of  
6 appealability; and

7 3) The Clerk is DIRECTED to close the action because this  
8 order terminates it in its entirety.

9  
10 IT IS SO ORDERED.

11 **Dated: January 18, 2011**

**/s/ Sandra M. Snyder**  
**UNITED STATES MAGISTRATE JUDGE**