

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PERCY STOCKTON,

Petitioner,

v.

D. FOSTON,

Respondent.

) 1:10-CV-00587 GSA HC

) ORDER DISMISSING PETITION

) ORDER DIRECTING CLERK OF COURT
) TO ENTER JUDGMENT

) ORDER DECLINING ISSUANCE OF
) CERTIFICATE OF APPEALABILITY

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. He has consented to exercise of Magistrate Judge jurisdiction pursuant to 28 U.S.C. § 636(c).

On April 5, 2010, Petitioner filed a federal petition for writ of habeas corpus in this Court. This petition was assigned case number “1:10-CV-00586 JLT HC,” and is currently in the screening stage. The petition complains of repeated denials by prison staff to process a CDC-602 appeal form. On the same date, Petitioner filed a second federal petition for writ of habeas corpus in this Court. This petition was assigned case number “1:10-CV-00587 GSA HC.” This petition also challenges the CDC-602 appeal denials.

“After weighing the equities of the case, the district court may exercise its discretion to

1 dismiss a duplicative later-filed action, to stay that action pending resolution of the previously filed
2 action, to enjoin the parties from proceeding with it, or to consolidate both actions.” Adams v.
3 California Dept. of Health Services, 487 F.3d 684, 688 (9th Cir. 2007). “Plaintiffs generally have
4 ‘no right to maintain two separate actions involving the same subject matter at the same time in the
5 same court and against the same defendant.’” Adams, 487 F.3d at 688 (quoting Walton v. Eaton
6 Corp., 563 F.2d 66, 70 (3d Cir. 1977) (en banc)).

7 In assessing whether a second action is duplicative of the first, the court examines whether
8 the causes of action and relief sought, as well as the parties or privies to the action, are the same.
9 Adams, 487 F.3d at 689. First, the court must examine whether the causes of action in the two suits
10 are identical pursuant to the transaction test, developed in the context of claim preclusion. Id.
11 Second, the court determines whether the defendants are the same or in privity. Privity includes an
12 array of relationships which fit under the title of “virtual representation.” Kourtis v. Cameron, 419
13 F.3d 989, 996 (9th Cir. 2005). “The necessary elements of virtual representation are an identity of
14 interests and adequate representation.” Adams, 487 F.3d at 691 (citing Kourtis, 419 F.3d at 996).
15 “Additional features of a virtual representation relationship include a close relationship, substantial
16 participation, and tactical maneuvering.” Adams, 487 F.3d at 691 (quoting Kourtis, 419 F.3d at
17 996).

18 A plaintiff is required to bring at one time all of the claims against a party or privies relating
19 to the same transaction or event. Adams, 487 F.3d at 693. The court has discretion to dismiss a
20 duplicative complaint with prejudice to prevent a plaintiff from “fragmenting a single cause of action
21 and litigating piecemeal the issues which could have been resolved in one action.” Adams, 487 F.3d
22 at 694 (quoting Flynn v. State Bd. of Chiropractic Exam'rs, 418 F.2d 668, 668 (9th Cir.1969) (per
23 curiam)).

24 Because the instant petition challenges the same issues as the petition currently pending in
25 case number “1:10-CV-00586 JLT HC,” the instant petition must be dismissed as duplicative. To the
26 extent Petitioner seeks to pursue his remedies with respect to the underlying convictions, he must do
27 so in the original case.

28 Certificate of Appealability

1 A state prisoner seeking a writ of habeas corpus has no absolute entitlement to appeal a
2 district court's denial of his petition, and an appeal is only allowed in certain circumstances. Miller-
3 El v. Cockrell, 537 U.S. 322, 335-36 (2003). The controlling statute in determining whether to issue
4 a certificate of appealability is 28 U.S.C. § 2253, which provides as follows:

5 (a) In a habeas corpus proceeding or a proceeding under section 2255 before a
6 district judge, the final order shall be subject to review, on appeal, by the court
of appeals for the circuit in which the proceeding is held.

7 (b) There shall be no right of appeal from a final order in a proceeding to test the
8 validity of a warrant to remove to another district or place for commitment or trial
9 a person charged with a criminal offense against the United States, or to test the
validity of such person's detention pending removal proceedings.

10 (c) (1) Unless a circuit justice or judge issues a certificate of appealability, an
appeal may not be taken to the court of appeals from—

11 (A) the final order in a habeas corpus proceeding in which the
12 detention complained of arises out of process issued by a State
court; or

13 (B) the final order in a proceeding under section 2255.

14 (2) A certificate of appealability may issue under paragraph (1) only if the
15 applicant has made a substantial showing of the denial of a constitutional right.

16 (3) The certificate of appealability under paragraph (1) shall indicate which
specific issue or issues satisfy the showing required by paragraph (2).

17 If a court denies a petitioner's petition, the court may only issue a certificate of appealability
18 "if jurists of reason could disagree with the district court's resolution of his constitutional claims or
19 that jurists could conclude the issues presented are adequate to deserve encouragement to proceed
20 further." Miller-El, 537 U.S. at 327; Slack v. McDaniel, 529 U.S. 473, 484 (2000). While the
21 petitioner is not required to prove the merits of his case, he must demonstrate "something more than
22 the absence of frivolity or the existence of mere good faith on his . . . part." Miller-El, 537 U.S. at
23 338.

24 In the present case, the Court finds that reasonable jurists would not find the Court's
25 determination that Petitioner is not entitled to federal habeas corpus relief debatable, wrong, or
26 deserving of encouragement to proceed further. Petitioner has not made the required substantial
27 showing of the denial of a constitutional right. Accordingly, the Court hereby DECLINES to issue a
28 certificate of appealability.

ORDER

Accordingly, IT IS HEREBY ORDERED:

- 1) The petition for writ of habeas corpus is DISMISSED;
- 2) The Clerk of Court is DIRECTED to enter judgment and close the case; and
- 3) The Court DECLINES to issue a certificate of appealability.

IT IS SO ORDERED.

Dated: April 26, 2010

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE