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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

WILLIAM CARNEY, JR.,)	1:10-cv-01071-SKO-HC
)	
Petitioner,)	ORDER DISMISSING THE PETITION FOR
)	FAILURE TO FOLLOW AN ORDER OF THE
)	COURT (DOCS. 1, 7) AND DECLINING
v.)	TO ISSUE A CERTIFICATE OF
)	APPEALABILITY
STATE BOARD OF PRISON TERMS,)	
et al.,)	ORDER DIRECTING THE CLERK TO
)	CLOSE THE ACTION
Respondents.)	
)	
)	

Petitioner is a state prisoner proceeding in forma pauperis and pro se 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 June 22, 2010 (doc. 4). Pending before the Court is the petition filed by Petitioner, an inmate of the Avenal State Prison (ASP), on June 15, 2010.

I. Failure to Prosecute and Follow an Order of the Court

On December 8, 2010, the Court found that Petitioner had

1 failed to state a claim cognizable pursuant to § 2254, ordered
2 the petition dismissed with leave to amend, and directed
3 Petitioner to file an amended petition no later than thirty (30)
4 days after the date of service of the order. The order was
5 served by mail on Petitioner on December 8, 2010. Although
6 almost sixty (60) days have passed since the service of the
7 Court's order, Petitioner has not filed the amended petition or
8 timely sought an extension of time in which to do so.

9 Local Rule 110 provides that "...failure of counsel or of a
10 party to comply with these Rules or with any order of the Court
11 may be grounds for the imposition by the Court of any and all
12 sanctions... within the inherent power of the Court." District
13 courts have the inherent power to control their dockets and "in
14 the exercise of that power, they may impose sanctions including,
15 where appropriate... dismissal of a case." Thompson v. Housing
16 Auth., 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an
17 action, with prejudice, based on a party's failure to prosecute
18 an action, failure to obey a court order, or failure to comply
19 with local rules. See, e.g. Ghazali v. Moran, 46 F.3d 52, 53-54
20 (9th Cir. 1995) (dismissal for noncompliance with local rule);
21 Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992)
22 (dismissal for failure to comply with an order requiring
23 amendment of complaint); Carey v. King, 856 F.2d 1439, 1440-41
24 (9th Cir. 1988) (dismissal for failure to comply with local rule
25 requiring pro se plaintiffs to keep court apprised of address);
26 Malone v. U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987)
27 (dismissal for failure to comply with court order); Henderson v.
28 Duncan, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for lack

1 of prosecution and failure to comply with local rules).

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

12 In this case, the Court finds that the public's interest in
13 expeditiously resolving this litigation and the Court's interest
14 in managing the docket weigh in favor of dismissal, as the case
15 has been pending since June 2010. The third factor, risk of
16 prejudice to respondents, also weighs in favor of dismissal,
17 since a presumption of injury arises from the occurrence of
18 unreasonable delay in prosecuting an action. Anderson v. Air
19 West, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor --
20 public policy favoring disposition of cases on their merits -- is
21 greatly outweighed by the factors in favor of dismissal discussed
22 herein. Finally, a court's warning to a party that his failure
23 to obey the court's order will result in dismissal satisfies the
24 "consideration of alternatives" requirement. Ferdik v. Bonzelet,
25 963 F.2d at 1262; Malone, 833 at 132-33; Henderson, 779 F.2d at
26 1424. The Court's order directing Petitioner to file an amended
27 petition expressly stated, "Petitioner is informed that a failure
28 timely to respond to this order will result in a recommendation

1 that the petition be dismissed.” (Doc. 7, 8:23-25.) Thus,
2 Petitioner received adequate warning that dismissal would result
3 from his noncompliance with the Court’s order.

4 II. Certificate of Appealability

5 Unless a circuit justice or judge issues a certificate of
6 appealability, an appeal may not be taken to the Court of Appeals
7 from the final order in a habeas proceeding in which the
8 detention complained of arises out of process issued by a state
9 court. 28 U.S.C. § 2253(c)(1)(A); Miller-El v. Cockrell, 537
10 U.S. 322, 336 (2003).

11 A certificate of appealability may issue only if the
12 applicant makes a substantial showing of the denial of a
13 constitutional right. § 2253(c)(2). Under this standard, a
14 petitioner must show that reasonable jurists could debate whether
15 the petition should have been resolved in a different manner or
16 that the issues presented were adequate to deserve encouragement
17 to proceed further. Miller-El v. Cockrell, 537 U.S. at 336
18 (quoting Slack v. McDaniel, 529 U.S. 473, 484 (2000)). A
19 certificate should issue if the Petitioner shows that jurists of
20 reason would find it debatable whether the petition states a
21 valid claim of the denial of a constitutional right and that
22 jurists of reason would find it debatable whether the district
23 court was correct in any procedural ruling. Slack v. McDaniel,
24 529 U.S. 473, 483-84 (2000). In determining this issue, a court
25 conducts an overview of the claims in the habeas petition,
26 generally assesses their merits, and determines whether the
27 resolution was debatable among jurists of reason or wrong. Id.
28 It is necessary for an applicant to show more than an absence of

1 frivolity or the existence of mere good faith; however, it is not
2 necessary for an applicant to show that the appeal will succeed.
3 Miller-El v. Cockrell, 537 U.S. at 338.

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

7 Here, it does not appear that reasonable jurists could
8 debate whether the petition should have been resolved in a
9 different manner. Petitioner has not made a substantial showing
10 of the denial of a constitutional right. Accordingly, the Court
11 will declines to issue a certificate of appealability.

12 III. Disposition

13 Accordingly, it is ORDERED that:

14 1) The petition is DISMISSED without prejudice pursuant to
15 Local Rule 110 for Petitioner's failure to comply with the
16 Court's order; and

17 2) The Court DECLINES to issue a certificate of
18 appealability; and

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

21
22 IT IS SO ORDERED.

23 **Dated: February 8, 2011**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE