

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ERIC WATKINS,

1:10-cv-01834-SMS (HC)

Petitioner,

ORDER DISMISSING PETITION FOR WRIT
OF HABEAS CORPUS FOR FAILURE TO
COMPLY WITH A COURT ORDER

v.

[Doc. 1]

KELLY HARRINGTON,

Respondent.

Petitioner is a state prisoner proceeding 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. Local Rule 305(b).

Petitioner filed the instant petition for writ of habeas corpus on August 26, 2010, in the United States District Court for the Northern District of California. The petition was transferred to this Court on September 14, 2010.

On December 2, 2010, the Court dismissed the petition with leave to amend. Pursuant to the Court's subsequent order on February 9, 2011, the amended petition was due on or before March 7, 2011. Petitioner has failed to respond or otherwise comply with the Court's order.

Local Rule 110 provides that a "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

1 including, where appropriate . . . dismissal of a case.” Thompson v. Housing Auth., 782 F.2d
2 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party’s
3 failure to prosecute an action, failure to obey a court order, or failure to comply with local rules.
4 See, e.g., Ghazali v. Moran, 46 F.3d 52, 53-54 (9th Cir. 1995)(dismissal for noncompliance with
5 local rule); Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to
6 comply with an order requiring amendment of complaint); Malone v. U.S. Postal Service, 833
7 F.2d 128, 130 (9th Cir. 1987)(dismissal for failure to comply with court order).

8 In determining whether to dismiss an action for lack of prosecution, the Court must
9 consider several factors: (1) the public’s interest in expeditious resolution of litigation; (2) the
10 Court’s need to manage its docket; (3) the risk of prejudice to the Respondents; (4) the public
11 policy favoring disposition of cases on their merits; and, (5) the availability of less drastic
12 alternatives. Henderson v. Duncan, 779 F.2d 1421, 1423 (9th Cir. 1986); Carey v. King, 856
13 F.2d 1439 (9th Cir. 1988). The Court finds that the public’s interest in expeditiously resolving
14 this litigation and the court’s interest in managing the docket weigh in favor of dismissal, as this
15 case has been pending since August 26, 2010. The Court cannot hold this case in abeyance
16 indefinitely awaiting compliance by Petitioner. The third factor, risk of prejudice to
17 Respondents, also weighs in favor of dismissal, since a presumption of injury arises from the
18 occurrence of unreasonable delay in prosecuting an action. Anderson v. Air West, 542 F.2d 522,
19 524 (9th Cir. 1976). The fourth factor -- public policy favoring disposition of cases on their
20 merits -- is greatly outweighed by the factors in favor of dismissal discussed herein. Finally,
21 given Petitioner’s noncompliance with the Court’s order, no lesser sanction is feasible.

22 Accordingly, it is HEREBY ORDERED that:

- 23 1. The instant petition for writ of habeas corpus is DISMISSED; and
24 2. The Clerk of Court is directed to terminate this action.

25 IT IS SO ORDERED.

26 **Dated: March 22, 2011**

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE