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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

MARK LEON PEREZ	)	1:12-cv-01920-SKO-HC
	)	
Petitioner,	)	ORDER DISMISSING THE PETITION FOR
	)	FAILURE TO FOLLOW A COURT ORDER
	)	AND TO PROSECUTE (DOC. 1)
v.	)	
	)	ORDER DECLINING TO ISSUE A
ON HABEAS CORPUS,	)	CERTIFICATE OF APPEALABILITY AND
	)	DIRECTING THE CLERK TO CLOSE THE
Respondent.	)	ACTION
	)	
	)	

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 December 12, 2012 (doc. 6). Pending before the Court is the petition filed by Petitioner on November 27, 2012, and the Court's order of march 1, 2013, that 1) vacated a prior judgment of dismissal that had issued based on

1 Petitioner's previous failure to file timely a motion to amend  
2 the petition to name a proper respondent, and 2) directed  
3 Petitioner to file a motion to amend the petition to name a  
4 proper respondent within thirty days (doc. 12). The order was  
5 served on Petitioner by mail on March 1, 2013.

6 I. Background

7 Petitioner named as Respondent "On Habeas Corpus." (Pet.  
8 1.) On December 7, 2012, the Court issued an order granting  
9 leave to Petitioner to file a motion to amend the petition to  
10 name a proper respondent within thirty days, which was served on  
11 Petitioner on the same date. When Petitioner did not file a  
12 motion to amend the petition within the thirty-day period set by  
13 the Court, the Court issued on January 24, 2013, an order to  
14 Petitioner to show cause within twenty-one (21) days why the  
15 petition should not be dismissed for failure to comply with the  
16 Court's order. The order to show cause was served on Petitioner  
17 on the same date. An order dismissing the case was processed  
18 about the time that Petitioner filed an untimely response to the  
19 order to show cause. The dismissal was vacated by the Court's  
20 order of March 1, 2013.

21 Although over thirty days have passed since the issuance of  
22 the Court's order to Petitioner to file a motion to amend the  
23 petition within thirty days, no motion to amend the petition or  
24 request for an extension of time to file such a motion has been  
25 filed.

26 II. Failure to Prosecute and Follow an Order of the Court

27 Local Rule 110 provides that "...failure of counsel or of a  
28 party to comply with these Rules or with any order of the Court

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

20 In determining whether to dismiss an action for lack of  
21 prosecution, failure to obey a court order, or failure to comply  
22 with local rules, the court must consider several factors: (1)  
23 the public's interest in expeditious resolution of litigation;  
24 (2) the court's need to manage its docket; (3) the risk of  
25 prejudice to the defendants; (4) the public policy favoring  
26 disposition of cases on their merits; and (5) the availability of  
27 less drastic alternatives. Thompson, 782 F.2d at 831; Henderson,  
28 779 F.2d at 1423-24; Malone, 833 F.2d at 130; Ferdik, 963 F.2d at

1 1260-61; Ghazali, 46 F.3d at 53.

2 In this case, the Court finds that the public's interest in  
3 expeditiously resolving this litigation and the Court's interest  
4 in managing the docket weigh in favor of dismissal, as the case  
5 has been pending since November 2012. The third factor, risk of  
6 prejudice to respondents, also weighs in favor of dismissal,  
7 since a presumption of injury arises from the occurrence of  
8 unreasonable delay in prosecuting an action. Anderson v. Air  
9 West, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor --  
10 public policy favoring disposition of cases on their merits -- is  
11 greatly outweighed by the factors in favor of dismissal discussed  
12 herein. Finally, a court's warning to a party that his failure  
13 to obey the court's order will result in dismissal satisfies the  
14 "consideration of alternatives" requirement. Ferdik v. Bonzelet,  
15 963 F.2d at 1262; Malone, 833 at 132-33; Henderson, 779 F.2d at  
16 1424. The Court's order of March 1, 2013, directing Petitioner  
17 to file a motion to amend the petition, expressly informed  
18 Petitioner that a failure to comply with the order in a timely  
19 fashion would result in dismissal of the petition without further  
20 notice for failure to comply with a court order and failure to  
21 prosecute. (Doc. 12, 4.) Thus, Petitioner received adequate  
22 warning that dismissal would result from his noncompliance with  
23 the Court's order.

24 III. Certificate of Appealability

25 Unless a circuit justice or judge issues a certificate of  
26 appealability, an appeal may not be taken to the Court of Appeals  
27 from the final order in a habeas proceeding in which the  
28 detention complained of arises out of process issued by a state

1 court. 28 U.S.C. § 2253(c)(1)(A); Miller-El v. Cockrell, 537  
2 U.S. 322, 336 (2003).

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

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

27 Here, it does not appear that reasonable jurists could  
28 debate whether the petition should have been resolved in a

1 different manner. Petitioner has not made a substantial showing  
2 of the denial of a constitutional right.

3 Accordingly, the Court will decline to issue a certificate  
4 of appealability.

5 IV. Disposition

6 Accordingly, it is ORDERED that:

7 1) The petition is DISMISSED pursuant to Local Rule 110 for  
8 Petitioner's failure to comply with the Court's order and to  
9 prosecute this action; and

10 2) The Court DECLINES to issue a certificate of  
11 appealability; and

12 3) The Clerk is DIRECTED to close the action.

13 IT IS SO ORDERED.

14 Dated: April 25, 2013

/s/ Sheila K. Oberto  
UNITED STATES MAGISTRATE JUDGE

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