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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CHARLES SIMPSON,
Petitioner,

v.
THE WARDEN OF CSP-CORCORAN,
Respondent.

1:15-cv-00086 AWI MJS HC

**FINDINGS AND RECOMMENDATION TO
DISMISS ACTION FOR A FAILURE TO
FOLLOW COURT ORDER**

On January 20, 2015, Petitioner filed a petition for writ of habeas corpus. On January 22, 2015, the Court screened the petition, granted Petitioner leave to file an amended petition, and provided a blank habeas form for doing so. (ECF No. 4.) The Court found that Petitioner's original petition did not state the grounds for relief and facts supporting each ground, and therefore would not provide Respondent proper notice of his claims. (Id.) Petitioner was provided thirty (30) days to respond to the order and was forewarned that failure to respond would result in the dismissal of the petition. (Id.)

Petitioner did not file a response to the order. Instead, Petitioner filed a motion to grant the petition based on the Court's issuance of the January 22, 2015 order, and the Court's January 21, 2015 order authorizing in forma pauperis status. Petitioner asserts that he did not file motions that were the subject of the Court's orders, and that based on

1 the Court's alleged error in issuing the orders, his petition should be granted.

2 **I. DISCUSSION**

3 Local Rule 110 provides that "[f]ailure of counsel or of a party to comply with
4 these Rules or with any order of the Court may be grounds for imposition by the Court of
5 any and all sanctions . . . within the inherent power of the Court." District courts have the
6 inherent power to control their dockets and "in the exercise of that power, they may
7 impose sanctions including, where appropriate . . . dismissal of a case." Thompson v.
8 Housing Auth., 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with
9 prejudice, based on a party's failure to prosecute an action, failure to obey a court order,
10 or failure to comply with local rules. See, e.g., Ghazali v. Moran, 46 F.3d 52, 53-54 (9th
11 Cir. 1995) (dismissal for noncompliance with local rule); Ferdik v. Bonzelet, 963 F.2d
12 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring
13 amendment of complaint); Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988)
14 (dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court
15 apprised of address); Malone v. U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987)
16 (dismissal for failure to comply with court order); Henderson v. Duncan, 779 F.2d 1421,
17 1424 (9th Cir. 1986) (dismissal for lack of prosecution and failure to comply with local
18 rules). In determining whether to dismiss an action for lack of prosecution, failure to obey
19 a court order, or failure to comply with local rules, the court must consider several
20 factors: (1) the public's interest in expeditious resolution of litigation; (2) the court's need
21 to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy
22 favoring disposition of cases on their merits; and (5) the availability of less drastic
23 alternatives. Ghazali, 46 F.3d at 53; Ferdik, 963 F.2d at 1260-61; Malone, 833 F.2d at
24 130; Thompson, 782 F.2d at 831; Henderson, 779 F.2d at 1423-24.

25 In the instant case, the Court finds that the public's interest in expeditiously
26 resolving this litigation and the Court's interest in managing the docket weigh in favor of
27 dismissal because it does not appear that Plaintiff has made a good faith effort to
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1 prosecute this matter. Instead of filing an amended petition and further describing his
2 claims, Petitioner filed a cursory motion to grant the petition. Petitioner's motion is not a
3 proper response to the Court's order. As the Court described in the screening order, the
4 original petition does not set forth claims for relief or facts to support the claims. The
5 Court's orders were not improper. Petitioner need not move the Court prior to the
6 issuance of an order. In this case, the screening order and order granting in forma
7 pauperis status were properly issued sua sponte, and without need of a motion on behalf
8 of Petitioner or Respondent.

9 The third factor, risk of prejudice to defendants, also weighs in favor of dismissal
10 because a presumption of injury arises from any unreasonable delay in prosecuting an
11 action. Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor, public
12 policy favoring disposition of cases on their merits, is greatly outweighed by the factors in
13 favor of dismissal. Finally, a court's warning to a party that his failure to obey the court's
14 order will result in dismissal satisfies the "consideration of alternatives" requirement.
15 Ferdik, 963 F.2d at 1262; Malone, 833 F.2d at 132-33; Henderson, 779 F.2d at 1424.
16 Here, the Court's order was clear that dismissal would result from non-compliance with
17 the order. (See ECF No. 7 ["[F]ailure to follow this order will result in dismissal of the
18 petition pursuant to Local Rule 110."])

19 **II. RECOMMENDATION**

20 Accordingly, the Court HEREBY RECOMMENDS that this action be DISMISSED
21 for Plaintiff's failure to comply with a court order.

22 This Findings and Recommendation is submitted to the assigned United States
23 District Court Judge, pursuant to the provisions of Title 28 of the United States Code
24 section 636 (b)(1)(B). Within thirty (30) days after being served with a copy, any party
25 may file written objections with the court and serve a copy on all parties. Such a
26 document should be captioned "Objections to Magistrate Judge's Findings and
27 Recommendation." The Court will then review the Magistrate Judge's ruling pursuant to
28 Title 28 of the United States Code section 636(b)(1)(C). The parties are advised that

1 failure to file objections within the specified time may waive the right to appeal the
2 District Court's order. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014).

3
4 IT IS SO ORDERED.

5 Dated: March 3, 2015

/s/ Michael J. Seng
6 UNITED STATES MAGISTRATE JUDGE

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