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

JENNIFER ANN PAYNE,
Petitioner,

v.
GEORGE RUNNER,
Respondent.

1:16-cv-00072 MJS HC

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

**ORDER DIRECTING CLERK OF COURT
TO ASSIGN DISTRICT COURT JUDGE TO
THE PRESENT MATTER**

On January 15, 2016, Petitioner filed a petition for writ of habeas corpus. On January 25, 2016, the Court screened the petition and found that it failed to state grounds for relief or facts supporting grounds and thus failed to provide Respondent proper notice of the claims; the Court did, however, grant Petitioner leave to file an amended petition, and provided a blank habeas form for him to use in doing so. (ECF No. 4.) 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.

On March 14, 2016, the Court issued an order to show cause why the petition should not be dismissed for failure to comply with the Court's order. (ECF No. 6.) Over thirty (30) days have passed and Petitioner has not responded to the order to show cause.

1 **I. DISCUSSION**

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

24 In the instant case, the Court finds that the public's interest in expeditiously
25 resolving this litigation and the Court's interest in managing the docket weigh in favor of
26 dismissal because it does not appear that Plaintiff has made a good faith effort to
27 prosecute this matter. Petitioner has not filed an amended petition further describing her
28 claims as ordered by the Court.

1 The third factor, risk of prejudice to defendants, also weighs in favor of dismissal
2 because a presumption of injury arises from any unreasonable delay in prosecuting an
3 action. Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor, public
4 policy favoring disposition of cases on their merits, is greatly outweighed by the factors in
5 favor of dismissal. Finally, a court's warning to a party that his failure to obey the court's
6 order will result in dismissal satisfies the "consideration of alternatives" requirement.
7 Ferdik, 963 F.2d at 1262; Malone, 833 F.2d at 132-33; Henderson, 779 F.2d at 1424.
8 Here, the Court's order was clear that dismissal would result from non-compliance with
9 the order. (See ECF No. 6 ["Failure to respond by this deadline will result in dismissal of
10 this action."].)

11 **II. RECOMMENDATION**

12 Accordingly, the Court HEREBY RECOMMENDS that this action be DISMISSED
13 for Plaintiff's failure to comply with a court order. Further, the Court ORDERS the Clerk
14 of Court to assign a District Court Judge to the present matter.

15 This Findings and Recommendation is submitted to the assigned United States
16 District Court Judge, pursuant to the provisions of Title 28 of the United States Code
17 section 636 (b)(1)(B). Within thirty (30) days after being served with a copy, any party
18 may file written objections with the court and serve a copy on all parties. Such a
19 document should be captioned "Objections to Magistrate Judge's Findings and
20 Recommendation." The Court will then review the Magistrate Judge's ruling pursuant to
21 Title 28 of the United States Code section 636(b)(1)(C). The parties are advised that
22 failure to file objections within the specified time may waive the right to appeal the
23 District Court's order. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014).

24
25 IT IS SO ORDERED.

26 Dated: April 25, 2016

27 /s/ Michael J. Seng
28 UNITED STATES MAGISTRATE JUDGE

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