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

JOSEPH A. SHERMAN,

Petitioner,

No. CIV S-06-2270 FCD DAD P

vs.

YOLO CO. CHIEF PROBATION
OFFICER, et al.,

Respondents.

ORDER AND
FINDINGS AND RECOMMENDATIONS

_____/

Petitioner, an inmate confined in the Yolo County Jail when this action was filed, has submitted a petition for writ of habeas corpus together with an application to proceed in forma pauperis.

Petitioner alleges that his habeas petition “was originally filed on 4 Jan. 2006, CIV S-06-17 in E.D. Court,” that the action was dismissed, and that he was instructed to file a new action after his claims were completely exhausted. Petitioner asserts that he is filing this new action pursuant to the orders issued in the previous case.

Examination of the court’s records¹ reveals that petitioner filed nine habeas cases in this court prior to filing this action and that five of those cases are still pending. The petition

¹ A court may take judicial notice of court records. See MGIC Indem. Co. v. Weisman, 803 F.2d 500, 505 (9th Cir. 1986); United States v. Wilson, 631 F.2d 118, 119 (9th Cir. 1980).

1 filed in case No. CIV S-06-0017 DFL GGH HC on January 4, 2006, was dismissed as a mixed
2 petition on May 10, 2006. In an order filed on September 22, 2006, the court denied petitioner's
3 motion to re-open the closed case and advised petitioner that he must file a new action if he
4 wishes to proceed on previously dismissed claims.

5 A comparison of the petition filed in this new action with the petition filed in case
6 No. CIV S-06-0017 reveals that the two petitions do not concern the same conviction. In case
7 No. CIV S-06-0017, petitioner challenged a judgment of conviction entered in the Yolo County
8 Superior Court on approximately October 8, 2004. Petitioner alleged that he was convicted of
9 interference with a business, interference with peaceful activities on the campus of a university,
10 and resisting arrest. In attached pages, petitioner alleged that the charges of interference with a
11 business and resisting arrest arose from events that occurred in front of the Nugget Market on
12 June 16, 2004, and that the charge of interference with campus activities arose from events that
13 occurred on June 10, 2004, in the Memorial Union Coffee House at the University of California
14 in Davis.

15 In contrast, in the new petition received on October 16, 2006, petitioner
16 challenges a judgment of conviction entered in the Yolo County Superior Court on
17 approximately March 21, 2004. Petitioner alleges that he was convicted of two counts of
18 interference with a business. In attached pages, petitioner alleges that one charge of interference
19 with a business arose from events that occurred at the Albertson's grocery store in the Anderson
20 Plaza Shopping Center in September 2003, while the second charge arose from events that
21 occurred at the Yolo County Library on November 25, 2003.

22 Examination of petitioner's other habeas cases reveals that petitioner's new
23 petition alleges claims previously alleged in case No. CIV S-06-0016 GEB DAD HC, also filed
24 on January 4, 2006. In that case, petitioner challenges a judgment of conviction entered in the
25 Yolo County Superior Court on approximately March 20, 2004. He alleges that he was
26 convicted of two counts of interference with a business, one arising from events that occurred at

1 the Albertson's grocery store in the Anderson Plaza Shopping Center and the other arising from
2 events that occurred at the Yolo County Library. In case No. CIV S-06-0016, respondents were
3 directed to file a response to the petition and did so on September 14, 2006.

4 This action challenges convictions already at issue in a pending case. Due to the
5 duplicative nature of the present action, the court will recommend that this action be dismissed.
6 Petitioner's in forma pauperis application will be denied because it is incomplete and was not
7 submitted on a form appropriate for habeas corpus proceedings.

8 In accordance with the above, IT IS HEREBY ORDERED that petitioner's
9 October 16, 2006 application to proceed in forma pauperis is denied; and

10 IT IS RECOMMENDED that this action be dismissed as duplicative of case No.
11 CIV S-06-0016 GEB DAD HC.

12 These findings and recommendations are submitted to the District Judge assigned
13 to this case pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty days after being
14 served with these findings and recommendations, petitioner may file written objections with the
15 court. A document containing objections should be titled "Objections to Magistrate Judge's
16 Findings and Recommendations." Petitioner is advised that failure to file objections within the
17 specified time may, under certain circumstances, waive the right to appeal the District Court's
18 order. See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

19 DATED: October 23, 2006.

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22 _____
23 DALE A. DROZD
24 UNITED STATES MAGISTRATE JUDGE

23 DAD:13
24 sher2270.dup