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

10 JASON YONAI,

11 Petitioner,

No. CIV S-08-0192 WBS KJM P

12 vs.

13 WALKER, et al.,

14 Respondents.

FINDINGS AND RECOMMENDATIONS

15 _____/
16 Petitioner, a state prisoner proceeding pro se, has filed an application for a writ of
17 habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner has not, however, filed an in forma
18 pauperis affidavit or paid the required filing fee (\$5.00).

19 Nevertheless, the court finds that the instant action is frivolous. In considering
20 whether to dismiss an action as frivolous pursuant to § 1915(d), the court has especially broad
21 discretion. Conway v. Fugge, 439 F.2d 1397 (9th Cir. 1971). The Ninth Circuit has held that an
22 action is frivolous if it lacks arguable substance in law and fact. Franklin v. Murphy, 745 F.2d
23 1221, 1227-28 (9th Cir. 1984). The court's determination of whether a complaint or claim is
24 frivolous is based on “an assessment of the substance of the claim presented, i.e., is there
25 a factual and legal basis, of constitutional dimension, for the asserted wrong, however inartfully
26 pleaded.” Franklin, 745 F.2d at 1227 (citations omitted).

1 Petitioner's petition was filed with the court on January 28, 2008. The court's own
2 records reveal that on September 6, 2007, petitioner filed a petition challenging the same May 5,
3 2005 disciplinary finding. (See Case No. Civ. S- 07-1843 GEB GGH P.)¹

4 Due to the duplicative nature of the present action, the court finds it frivolous and,
5 therefore, will dismiss the petition. 28 U.S.C. § 1915(d). Petitioner is advised that filing several
6 challenges to the same conviction or disciplinary finding will not cause the issues to be resolved
7 any faster; indeed, his duplicative filings may hamper resolution of his claims as it forces the
8 court to determine what is currently pending.

9 IT IS HEREBY RECOMMENDED that this action be dismissed without
10 prejudice.

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

18 DATED: February 8, 2008.

19 
20 U.S. MAGISTRATE JUDGE

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26 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).