

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

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

FRANK IRVIN MOPPINS,

Petitioner,

No. CIV S-08-CV-2243 MCE CHS P

vs.

D. K. SISTO, Warden, et al.,

Respondents.

FINDINGS AND RECOMMENDATIONS

---

**I. INTRODUCTION**

Petitioner, Frank Irvin Moppins, is a former state prisoner proceeding *pro se* with a petition for writ of *habeas corpus* pursuant to 28 U.S.C. § 2254. Petitioner challenges the February 13, 2007 decision of the California Board of Parole Hearings (“the Board”) finding him unsuitable for parole, and seeks, *inter alia*, a reversal of that decision and his immediate release from his allegedly unconstitutional confinement. *See* Traverse, filed February 13, 2009, at 26. Following the filing of this petition, Petitioner was granted a parole release date at a subsequent parole suitability hearing and, in fact, was released on parole on October 19, 2009. Given that Petitioner appears to have received all the relief he requested, the court issued an order requiring Petitioner to show cause within twenty days why his petition should not be dismissed as moot. Petitioner failed to respond to this order. Accordingly, IT IS HEREBY RECOMMENDED that this action be

1 dismissed for failure to prosecute. FED. R. CIV. P. 41(b).

2 **II. BACKGROUND**

3 In January of 1983, Petitioner was convicted in the San Joaquin County Superior  
4 Court for first degree murder committed while engaged in a robbery and the robbery itself.  
5 Petitioner was sentenced to an indeterminate term of twenty-five years to life in prison. The  
6 criminal acts underlying Petitioner's convictions took place on December 6, 1980. Petitioner's  
7 minimum eligible parole release date passed on February 19, 1996.

8 On December 14, 2005, Petitioner appeared before the Board for a parole suitability  
9 hearing in which he was granted a parole release date. The Board's decision, however, was reversed  
10 by the Governor upon review. Petitioner appeared for a subsequent parole suitability hearing on  
11 February 13, 2007. After considering numerous positive and negative suitability factors, the Board  
12 concluded that Petitioner would pose an unreasonable risk of danger to society if released, and found  
13 him unsuitable for parole. It is the latter decision of the Board that is the subject of the petition at  
14 bar.

15 While this petition for federal *habeas corpus* relief was pending, another subsequent  
16 parole hearing was held, and Petitioner was again granted a parole release date. This time, the  
17 Governor declined to review the Board's decision. Petitioner was released from prison on October  
18 19, 2009 and remains on parole. On November 11, 2009, Respondent notified the court of  
19 Petitioner's release, but has not moved to dismiss the pending petition. On September 13, 2010, this  
20 court ordered Petitioner to show cause within twenty days why his pending petition should not be  
21 dismissed as moot. Petitioner was also warned that failure to timely respond or comply with the  
22 court's orders would result in a dismissal of his petition for failure to prosecute, pursuant to FED. R.  
23 CIV. P. 41(b). Petitioner did not respond to the court's order and, in fact, has had no communication  
24 with the court regarding his pending petition for writ of *habeas corpus* since filing his traverse on  
25 February 18, 2009.

26 ////

1 **III. DISCUSSION**

2 District courts have the inherent power to control their dockets and “in the exercise  
3 of that power, they may impose sanctions including, where appropriate...dismissal of a case.”  
4 *Thompson v. Housing Auth.*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with  
5 prejudice, based on a party’s failure to prosecute an action, failure to obey a court order, or failure  
6 to comply with local rules. *See, e.g., Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal  
7 for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992)  
8 (dismissal for failure to comply with an order requiring amendment of complaint); *Carey v. King*,  
9 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure to comply with local rule requiring *pro*  
10 *se* plaintiff to keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th  
11 Cir. 1987) (dismissal for failure to comply with court order).

12 In determining whether to dismiss an action for failure to prosecute, failure to comply  
13 with a court order, or failure to comply with local rules, the court must consider five factors: (1) the  
14 public’s interest in expeditious resolution of litigation; (2) the court’s need to manage its docket; (3)  
15 the risk of prejudice to the defendants/respondents; (4) the public policy favoring disposition of  
16 cases on their merits; and (5) the availability of less drastic alternatives. *Ghazali*, 46 F.3d at 53;  
17 *Ferdik*, 963 F.2d at 1260-61; *Malone*, 833 F.2d at 130.

18 In this case, the first two factors, the public’s interest in expeditiously resolving  
19 litigation and the court’s interest in managing the docket, weigh in favor of dismissal. This case has  
20 been pending since September 24, 2008 and approximately one month has passed since the  
21 expiration of the October 6, 2010 deadline for Petitioner to file his response required by the court’s  
22 September 13, 2010 order to show cause. To date, Petitioner has not filed his response, has not  
23 requested an extension of time to file a response, and has not communicated with the court in any  
24 way to explain his lack of compliance with the court’s order, thus hindering the court’s ability to  
25 resolve this litigation and manage its docket.

26 The third factor, risk of prejudice to Respondents, also weighs in favor of dismissal,



1 captioned "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the  
2 objections shall be filed and served within seven days after service of the objections. Failure to file  
3 objections within the specified time may waive the right to appeal the District Court's order. *Turner*  
4 *v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

5 DATED: November 4, 2010.

6  
7   
8 CHARLENE H. SORRENTINO  
9 UNITED STATES MAGISTRATE JUDGE