

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

VANNACK PRACH,

Petitioner,

No. CIV 08-2422 KJM

vs.

A. HEDGPATH, Warden,

Respondent.

ORDER AND

FINDINGS AND RECOMMENDATIONS

\_\_\_\_\_ /

Petitioner, a state prisoner proceeding pro se, has filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. In response to the court’s order that the warden respond to the petition, respondent has filed a notice informing the court that the action is duplicative.

The Ninth Circuit has held that an action is frivolous if it lacks arguable substance in law and fact. Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th Cir. 1984). The court's determination of whether a complaint or claim is frivolous is based on “an assessment of the substance of the claim presented, i.e., is there a factual and legal basis, of constitutional dimension, for the asserted wrong, however inartfully pleaded.” Franklin, 745 F.2d at 1227 (citations omitted).

Petitioner's petition was filed with the court on October 14, 2008. The court's own records reveal that on October 7, 2008, petitioner filed a petition containing virtually identical allegations against the same respondents in the Northern District, which transferred the case here on

1 October 17, 2008. (See Case No. Civ. S-08-2493 DAD.)<sup>1</sup> On March 17, 2009, respondent filed an  
2 answer in the other action.

3 Due to the duplicative nature of the present action, the court finds it frivolous and,  
4 therefore, will dismiss the petition. 28 U.S.C. § 1915(d).

5 IT IS HEREBY ORDERED that the Clerk of the Court assign a district judge to this  
6 case.

7 IT IS HEREBY RECOMMENDED that this action be dismissed.

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

14 DATED: July 20, 2009.

15   
16 U.S. MAGISTRATE JUDGE

17 2  
18 prac2422.123

19  
20  
21  
22  
23  
24  
25  
26  

---

<sup>1</sup> 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).