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

ANTHONY R. TURNER,

Petitioner,

No. CIV S-10-0636 GGH P

vs.

ED PRIETO,

Respondent.

ORDER

_____ /

Petitioner, a state prisoner proceeding pro se, has filed what is purported to be an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. This case is before the undersigned pursuant to petitioner’s consent. Doc. 3.

Petitioner filed this petition with the court on March 19, 2010. However, it is difficult to discern exactly what plaintiff seeks, as he challenges both his underlying conviction and the conditions of confinement. Regardless, the court's own records reveal that on March 8, 2010, petitioner filed a petition containing substantially similar allegations in this court, CIV S-10-0554 MCE JFM.¹ The court also notes that petitioner has filed approximately 34 federal actions since 2005.

In considering whether to dismiss an action as frivolous pursuant to § 1915(d), the

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 court has especially broad discretion. Conway v. Fugge, 439 F.2d 1397 (9th Cir. 1971). The Ninth
2 Circuit has held that an action is frivolous if it lacks arguable substance in law and fact. Franklin v.
3 Murphy, 745 F.2d 1221, 1227-28 (9th Cir. 1984). The court's determination of whether a complaint
4 or claim is frivolous is based on “an assessment of the substance of the claim presented, i.e., is there
5 a factual and legal basis, of constitutional dimension, for the asserted wrong, however inartfully
6 pleaded.” Franklin, 745 F.2d at 1227 (citations omitted).

7 In addition, this filing is clearly duplicative and should be dismissed. Adams v. Cal.
8 Dept. of Health Services, 487 F.3d 684, 688 (9th Cir. 2007)

9 Due to the duplicative nature of the present action, the court finds this action
10 frivolous and, therefore, will dismiss the petition. 28 U.S.C. § 1915(d). This court will not rule on
11 petitioner’s request to proceed in forma pauperis.

12 IT IS HEREBY ORDERED that this action be dismissed without prejudice. See Fed.
13 R. Civ. P. 41(b).

14 DATED: June 18, 2010

/s/ Gregory G. Hollows

UNITED STATES MAGISTRATE JUDGE

15 GGH: AB
16 turn0636.dup