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

GREGORY DOWNS,

Petitioner,

No. 2:11-cv-0176 LKK KJN P

vs.

DOMINGO URIBE, JR.,

Respondent.

ORDER AND

FINDINGS & RECOMMENDATIONS

_____ /

Petitioner, a state prisoner proceeding without counsel, has filed an application for a writ of habeas corpus, together with a request to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. Petitioner has submitted a declaration that makes the showing required by § 1915(a). Accordingly, the request to proceed in forma pauperis will be granted. 28 U.S.C. § 1915(a).

On January 12, 2011, petitioner filed the instant petition for writ of habeas corpus in the United States District Court for the Central District of California. (Dkt. No. 1.) On January 19, 2011, the petition was transferred to the Eastern District. This court’s own records reveal that on January 19, 2011, petitioner filed a separate petition for writ of habeas corpus in

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1 this district. (Case No. 2:11-cv-0163 GEB KJN P.)¹ Both petitions state that petitioner is not
2 challenging his conviction, but is filing a Rule 27 petition to obtain a deposition in Downs v.
3 Uribe, Case No. 10-2029 H (AJB) (S.D. Cal.) Petitioner’s filing in the instant action is virtually
4 identical to the petition filed in Case No. 2:11-cv-0163 GEB KJN P. Due to the duplicative
5 nature of the present action, the court will recommend that the instant petition be dismissed.

6 In accordance with the above, IT IS HEREBY ORDERED that:

- 7 1. Petitioner is granted leave to proceed in forma pauperis; and
- 8 2. The Clerk of Court is directed to serve a copy of this order together with a
9 copy of the petition filed in the instant case on the Attorney General of the State of California.

10 Further, IT IS HEREBY RECOMMENDED that this action be dismissed without
11 prejudice. See Fed. R. Civ. P. 41(b).

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-one days after
14 being served with these findings and recommendations, petitioner may file written objections
15 with the court. The document should be captioned “Objections to Magistrate Judge’s Findings
16 and Recommendations.” Petitioner is advised that failure to file objections within the specified
17 time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153
18 (9th Cir. 1991).

19 DATED: April 15, 2011

20
21 
22 KENDALL J. NEWMAN
23 UNITED STATES MAGISTRATE JUDGE

24 down0176.23

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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).