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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ALPHONSO RAY WILSON,
Petitioner,
v.
ERIC ARNOLD,
Respondent.

No. 2:14-cv-2300 MCE GGH P

FINDINGS & 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, together with a request to proceed in forma pauperis.

Examination of the in forma pauperis affidavit reveals that petitioner is unable to afford the costs of suit. Accordingly, the request for leave to proceed in forma pauperis is granted. See 28 U.S.C. § 1915(a). The court must now determine if the action is frivolous or malicious.

In considering whether to dismiss an action as frivolous pursuant to § 1915(d), the court has especially broad discretion. Conway v. Fugge, 439 F.2d 1397 (9th Cir. 1971). 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).

1 Petitioner’s petition was filed with the court on October 2, 2014. The court’s own records
2 reveal that on October 1, 2014, petitioner filed a petition containing virtually identical allegations
3 against the same respondents. (Civ.S. 2:14-cv-2288 TLN CKD).¹ Due to the duplicative nature
4 of the present action, the court finds it frivolous and, therefore, will dismiss the petition. 28
5 U.S.C. § 1915(d).

6 IT IS HEREBY RECOMMENDED that this action be dismissed without prejudice. See
7 Fed. R. Civ. P. 41(b).

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

15 Dated: November 3, 2014

16 /s/ Gregory G. Hollows

17 UNITED STATES MAGISTRATE JUDGE

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19 GGH:076/wils2300.123

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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).