

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL MARKS.

No. 2:15-cv-0803 CKD P

Petitioner,

V.

SCOTT FRAUENHEIM,

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, 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 April 14, 2015. The court's own records
2 reveal that on April 13, 2015, petitioner filed a petition containing virtually identical allegations
3 against the same respondent. (2:15-cv-0665 DAD P).¹ Due to the duplicative nature of the
4 present action, the court finds it frivolous and, therefore, will recommend dismissal of the
5 petition. 28 U.S.C. § 1915(d).

6 Accordingly, IT IS HEREBY ORDERED that the Clerk of Court assign a district judge to
7 this action.

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

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

17 Dated: April 17, 2015


18 CAROLYN K. DELANEY
19 UNITED STATES MAGISTRATE JUDGE

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24 2/mp; mark0803.123

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27 ¹ A court may take judicial notice of court records. See MGIC Indem. Co. v. Weisman, 803 F.2d
28 500, 505 (9th Cir. 1986); United States v. Wilson, 631 F.2d 118, 119 (9th Cir. 1980).