

1 Court records demonstrate that on February 27, 2012, petitioner filed another petition in
2 this court challenging the same criminal conviction and sentence challenged in the instant
3 petition. See Herrera v. Gipson, Case No. 2:12-cv-0508 DAD P.¹ Petitioner claimed that his
4 guilty plea was involuntary, and that his trial and appellate counsel had provided ineffective
5 assistance of counsel. Petitioner was represented by appointed counsel before this court.
6 Following an evidentiary hearing, the petition was denied. See id. (ECF No. 124). Thereafter, on
7 December 9, 2016, the Ninth Circuit Court of Appeals denied petitioner's request for a certificate
8 of appealability. Id. (ECF No. 129). Meanwhile and thereafter, this court has repeatedly
9 dismissed duplicative habeas petitions. See e.g. Herrera v. Davey, Case No. 2:14-cv-1810 CKD
10 P (dismissed Sept. 17, 2014); Herrera v. Davey, Case No. 2:18-cv-3240 KJM GGH P (dismissed
11 May 29, 2019).

12 Due to the duplicative nature of the instant action, the undersigned will recommend that it
13 too be dismissed. See Rule 4, Rules Governing Section 2254 Cases (this court must summarily
14 dismiss a petition if it "plainly appears from the petition and any attached exhibits that the
15 petitioner is not entitled to relief in the district court"). Petitioner is informed that before he can
16 challenge his 2010 conviction again in this court, on any grounds, he must first obtain from the
17 Ninth Circuit Court of Appeals an order authorizing this court to consider his successive petition.
18 See 28 U.S.C. § 2244(b)(3).

19 Accordingly, for the foregoing reasons, IT IS HEREBY ORDERED that Petitioner's
20 application to proceed in forma pauperis is granted.

21 Further, IT IS HEREBY RECOMMENDED that this action be dismissed because it is
22 duplicative of petitioner's prior habeas petitions, see Rule 4, Rules Governing § 2254 Cases.

23 These findings and recommendations are submitted to the United States District Judge
24 assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14)
25 days after being served with these findings and recommendations, petitioner may file written

26 ¹ This court may take judicial notice of court records. See United States v. Howard, 381 F.3d
27 873, 876 n.1 (9th Cir. 2004); United States v. Wilson, 631 F.2d 118, 119 (9th Cir. 1980); see also
28 Fed. R. Evid. 201 (court may take judicial notice of facts that are capable of accurate
determination by sources whose accuracy cannot reasonably be questioned).

1 objections with the court. Such document should be captioned “Objections to Magistrate Judge’s
2 Findings and Recommendations.” Petitioner is advised that failure to file objections within the
3 specified time may waive the right to appeal the District Court’s order. *Martinez v. Ylst*, 951
4 F.2d 1153 (9th Cir. 1991).

5 DATED: September 3, 2019

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8 ALLISON CLAIRE
9 UNITED STATES MAGISTRATE JUDGE
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