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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DEWEY JOE DUFF,

Plaintiff,

v.

STATE OF CALIFORNIA; *et al.*,

Defendants.

No. C-14-4036 EMC (pr)

ORDER OF DISMISSAL

Dewey Joe Duff, an inmate on death row at San Quentin State Prison, filed this *pro se* civil rights action under 42 U.S.C. § 1983, complaining about various problems in his criminal case and in the California process for reviewing capital convictions and sentences. He alleges that California's system for review of convictions and sentences in death penalty cases is unconstitutionally slow, and that the record on appeal for his case is deficient due to the ineffective assistance of appellate counsel. His complaint is now before the Court for review under 28 U.S.C. § 1915A.

The Court must dismiss a prisoner's complaint if it determines that the action "is frivolous [or] malicious." 28 U.S.C. § 1915A(b)(1). (Section § 1915A(b)(1) is the prisoner analog to 28 U.S.C. § 1915(e), which allows the court to dismiss any pauper's complaint if it is, among other things, "frivolous or malicious.") The district court may dismiss under § 1915 "a complaint 'that merely repeats pending or previously litigated claims.'" *Cato v. United States*, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995); *Bailey v. Johnson*, 846 F.2d 1019, 1021 (5th Cir. 1988) (duplicative or repetitious litigation of virtually identical causes of action is subject to dismissal under 28 U.S.C. §

1 1915 as malicious); *Van Meter v. Morgan*, 518 F.2d 366 (8th Cir. 1975) (dismissal of complaint as
2 frivolous was not an abuse of discretion where plaintiff had filed other similar complaints).

3 The complaint in this action repeats claims that Mr. Duff made in an action he commenced in
4 2012, *Duff v. Brown*, Case No. C 12-529 EMC. After giving Mr. Duff two opportunities to amend,
5 the Court dismissed the 2012 action “because the amended complaint fails to state a claim against
6 any particular defendant and fails to comply with the court’s order to correct the deficiencies in the
7 earlier pleadings. In the alternative, this action is dismissed because *Younger* abstention is
8 warranted.” *Duff v. Brown*, Case No. C 12-529 EMC, Docket # 17 at 9. Mr. Duff appealed. This
9 Court certified that the appeal was not taken in good faith and revoked pauper status for the appeal.
10 *Duff v. Brown*, Case No. C 12-529 EMC, Docket # 24. The Ninth Circuit denied Mr. Duff’s
11 “motion to proceed *in forma pauperis* because we also find the appeal is frivolous.” *Duff v. Brown*,
12 Ninth Cir. Case No. 13-16511, Docket # 7 (Order filed Jan. 14, 2014). Shortly thereafter, the Ninth
13 Circuit dismissed the appeal.

14 This action is frivolous because it merely repeats claims that were made in another action
15 and were adjudicated against Mr. Duff. *See Cato*, 70 F.3d at 1105 n.2. A small portion of the
16 complaint offers some new factual allegations about claims asserted in the 2012 action; sandwiched
17 within the 55-page generic complaint about the California capital appeals process are six
18 handwritten pages (Docket # 1 at 3-8) that describe some particulars in support of Mr. Duff’s
19 contentions that deficient performance by his appointed attorneys resulted in a deficient record on
20 appeal. The new factual allegations in support of the ineffective assistance of counsel claim do not
21 alter the outcome of this case because (a) they provide no grounds for any relief against the three
22 defendants (i.e., the State of California, the Governor of California, or the Attorney General of
23 California); (b) the ineffective assistance of counsel claim has the same problem under *Heck v.*
24 *Humphrey*, 512 U.S. 477 (1994), discussed in the order of dismissal of the 2012 action, *see Duff v.*
25 *Brown*, No. C 12-529 EMC,

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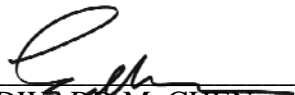
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1 Docket # 17 at 4-5; and (c) alternatively, *Younger* abstention would be required for the same reasons
2 explained in the order of dismissal of the 2012 action, *see id.* at 7-8. Therefore, this action is
3 DISMISSED because it is frivolous.

4 The Clerk shall close the file.

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6 IT IS SO ORDERED.

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8 Dated: October 15, 2014

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12 EDWARD M. CHEN
13 United States District Judge
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