

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

E-FILED - 4/24/09

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

GILBERTO JUAREZ,)
)
 Plaintiff,)
)
 v.)
)
 SANTA CLARA COUNTY, et al.,)
)
 Defendant.)
 _____)

No. C 09-0778 RMW (PR)
ORDER OF DISMISSAL

This case was opened when the Clerk of Court received a complaint filed under 42 U.S.C. § 1983 from plaintiff. The complaint appears to be a copy of a civil rights complaint that plaintiff filed earlier, Juarez v. Santa Clara County Superior Court Judges, No. C. 08-5404 RMW (PR). That action was dismissed for failure to state a claim on January 30, 2009. In fact, in the present complaint, plaintiff notes that this action is a “refiling of C 08-5404.” Because the court previously considered the claims and allegations in the present complaint in petitioner’s earlier case, there is no need for plaintiff to proceed in this duplicate action.

Further, the complaint appears to challenge alleged errors in plaintiff’s state post-conviction proceedings. The alleged errors are not sufficient to state a cognizable claim for relief in a civil rights action. If plaintiff wished to challenge post-conviction proceedings, then he should have filed a timely notice of appeal for each judgment rather than attempt to litigate such claims in a civil rights action.

1 In order to state a claim under 42 U.S.C. § 1983, plaintiff must allege two elements: (1)
2 that a right secured by the Constitution or laws of the United States was violated, and (2) that the
3 violation was committed by a person acting under the color of state law. See West v. Atkins,
4 487 U.S. 42, 48 (1988). In addition, in order for a complaint to state a claim arising under
5 federal law, it must be clear from the face of plaintiff's well-pleaded complaint that there is a
6 federal question. See Easton v. Crossland Mortgage Corp., 114 F.3d 979, 982 (9th Cir. 1997).
7 Here, plaintiff's complaint fails state a cognizable claim for relief under § 1983.

8 Accordingly, the instant action is DISMISSED. The Clerk shall terminate all pending
9 motions, enter judgment and close the file.

10 IT IS SO ORDERED.

11 DATED: 4/24/09


RONALD M. WHYTE
United States District Judge