UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JUNIOR FRED BLACKSTON, #245760,

Petitioner,

v.

CASE NO. 2:10-CV-12621
HONORABLE VICTORIA A. ROBERTS

LLOYD RAPELJE,

Respondent.
_____/

OPINION AND ORDER DISMISSING HABEAS CASE AS DUPLICATIVE, DENYING A CERTIFICATE OF APPEALABILITY, AND DENYING LEAVE TO PROCEED IN FORMA PAUPERIS ON APPEAL

This is a habeas case brought pursuant to 28 U.S.C. § 2254. Petitioner Junior Fred Blackston, a state prisoner confined at the Saginaw Correctional Facility in Freeland, Michigan, challenges his first-degree murder conviction and mandatory life sentence which were imposed following a jury trial in the Van Buren County Circuit Court in 2002. He raises 13 claims for relief in his petition.

Petitioner has already filed a federal habeas action challenging the same conviction with this Court, which is currently pending before another district judge. *See Blackston v. Rapelje*, Case No. 2:09-CV-14766 (Tarnow, J.). Accordingly, the instant action must be dismissed as duplicative. A suit is duplicative, and subject to dismissal, if the claims, parties, and available relief do not significantly differ between the two actions. *See, e.g., Barapind v. Reno*, 72 F. Supp. 2d 1132, 1145 (E.D. Cal. 1999) (internal citations omitted). The instant action is duplicative of his pending first habeas petition. Because Petitioner challenges the same conviction in both petitions and raises the same claims, the Court will dismiss this second

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petition as duplicative. *See Harrington v. Stegall*, 2002 WL 373113, *2 (E.D. Mich. Feb. 28, 2002); *Colon v. Smith*, 2000 WL 760711, *1, n. 1 (E.D. Mich. May 8, 2000); *see also Davis v. United States Parole Comm'n*, 870 F.2d 657, 1989 WL 25837, *1 (6th Cir. March 7, 1989) (district court may dismiss a habeas petition as duplicative of a pending habeas petition when the second petition is essentially the same as the first petition).

Accordingly, the Court **DISMISSES** the instant case as duplicative. This dismissal is without prejudice to the habeas petition filed in Case No. 2:09-CV-14766. This case is closed.

Before Petitioner may appeal this decision, a certificate of appealability must issue. *See* 28 U.S.C. § 2253(c)(1)(a); Fed. R. App. P. 22(b). A certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When a district court denies a habeas claim on procedural grounds without addressing the merits, a certificate of appealability should issue if it is shown that jurists of reason would find it debatable whether the petitioner states a valid claim of the denial of a constitutional right, and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling. *See Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000). Reasonable jurists could not debate whether the Court was correct in its procedural ruling. Accordingly, the Court **DENIES** a certificate of appealability. The Court also **DENIES** leave to proceed *in forma pauperis* on appeal as any appeal would be frivolous and cannot be take in good faith. *See* Fed. R. App. P. 24(a).

IT IS ORDERED.

S/Victoria A. Roberts
Victoria A. Roberts
United States District Judge

Dated: July 21, 2010

The undersigned certifies that a copy of this document was served on the attorneys of record and Junior Fred Blackston by electronic means or U.S. Mail on July 21, 2010.

s/Carol A. Pinegar
Deputy Clerk