

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RODNEY SLUSSER,

Petitioner,

v.

CASE NO. 2:10-CV-13171
HONORABLE ANNA DIGGS TAYLOR

STATE OF MICHIGAN,

Respondent.

_____ /

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

Petitioner Rodney Slusser, currently confined at the Jackson County Jail in Jackson, Michigan, has filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 contending that he is being held in violation of his constitutional rights. It appears that Petitioner is awaiting trial on state criminal charges of aggravated domestic assault and felonious assault with a weapon. In his petition, he raises issues concerning the impartiality of the trial judge assigned to his case, the validity of a habitual offender charge, a jail assault, and the lack of payment for court-ordered medications.

Petitioner has already filed a federal habeas action concerning his current incarceration which is pending before another district judge. *See Slusser v. State of Michigan*, Case No. 2:10-CV-12611 (Cleland, 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 is contesting his pre-trial confinement in both petitions and raises similar and/or related issues in both petitions, the Court will dismiss this second 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).¹

Accordingly, the Court **DISMISSES** the instant case as duplicative. This dismissal is without prejudice to the habeas petition filed in Case No. 2:10-CV-12611. 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.

¹To the extent that Petitioner may be seeking to present issues in this case which were not previously raised in his initial petition, his proper recourse is to amend or supplement his prior petition, not to institute a new case.

Accordingly, the Court **DENIES** a certificate of appealability. The Court also **DENIES** leave to proceed *in forma pauperis* on appeal as any appeal from this non-prejudicial dismissal would be frivolous and cannot be take in good faith. *See* Fed. R. App. P. 24(a).

IT IS SO ORDERED.

DATED: September 30, 2010

s/Anna Diggs Taylor
ANNA DIGGS TAYLOR
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing Order of Dismissal was served upon Petitioner by First Class U.S. mail on September 30, 2010.

Rodney Slusser
Jackson County Jail
212 W Wesley Street
Jackson, MI 49201

s/Johnetta M. Curry-Williams
Case Manager