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

SARAH ELIZABETH DUTRA,

Petitioner,

No. CIV S-10-CV-1657 CHS

vs.

MARY LATTIMORE,

Respondents.

ORDER

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I. INTRODUCTION

Petitioner, Sarah Elizabeth Dutra, is a former state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. In 2003, Petitioner was convicted by jury for the crimes of voluntary manslaughter and being an accessory to murder after the fact and was sentenced to serve eleven years in state prison. On June 29, 2010, Petitioner filed the instant federal petition for writ of habeas corpus challenging the constitutionality of her 2003 convictions. This matter is submitted for decision and both parties have consented to jurisdiction by a United States Magistrate Judge.

II. BACKGROUND

Petitioner was convicted in 2003 following a jury trial in the San Joaquin County Superior Court for voluntary manslaughter and being an accessory to murder after the fact, and was

1 for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992)
2 (dismissal for failure to comply with an order requiring amendment of complaint); *Carey v. King*,
3 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure to comply with local rule requiring *pro*
4 *se* plaintiff to keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th
5 Cir. 1987) (dismissal for failure to comply with court order).

6 In determining whether to dismiss an action for failure to prosecute, failure to comply
7 with a court order, or failure to comply with local rules, the court must consider five factors: (1) the
8 public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3)
9 the risk of prejudice to the defendants/respondents; (4) the public policy favoring disposition of
10 cases on their merits; and (5) the availability of less drastic alternatives. *Ghazali*, 46 F.3d at 53;
11 *Ferdik*, 963 F.2d at 1260-61; *Malone*, 833 F.2d at 130.

12 In this case, the first two factors, the public's interest in expeditiously resolving
13 litigation and the court's interest in managing the docket, weigh in favor of dismissal. This case has
14 been pending since June 29, 2010 and approximately one month has passed since the expiration of
15 the twenty day deadline for Petitioner to file the response required by the court's January 6, 2012
16 order to show cause. To date, Petitioner has not filed a response, has not requested an extension of
17 time to file a response, and has not communicated with the court in any way to explain her lack of
18 compliance with the court's order, thus hindering the court's ability to resolve this litigation and
19 manage its docket.

20 The third factor, risk of prejudice to Respondents, also weighs in favor of dismissal,
21 since a presumption of injury arises from the occurrence of unreasonable delay in prosecuting an
22 action. *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). Where, as here, Petitioner has
23 offered no excuse for her failure to respond to the court's order, the prejudice factor favors dismissal
24 of the action. *Yourish v. California Amplifier*, 191 F.3d 983, 991-92 (9th Cir. 1999). The fourth
25 factor, public policy favoring disposition of cases on their merits, is greatly outweighed by the
26 factors in favor of dismissal. Further, Petitioner's failure to comply with the court's order strongly

1 suggests that additional time spent by the court on this case will consume scarce judicial resources
2 in addressing litigation which Petitioner has now demonstrated little intention to diligently pursue.

3 Finally, Petitioner was served the court's January 6, 2012 order at both her address
4 of record as well as the forwarding address she left with the prison upon her release in order to
5 ensure her adequate opportunity to respond. Given Petitioner's noncompliance with the court's
6 order, no lesser sanction is feasible. Providing Petitioner with an opportunity to show cause why
7 her petition should not be dismissed "constituted an attempt at a less drastic sanction to that of
8 outright dismissal." *Ferdik*, 963 F.2d at 1262. Moreover, Petitioner was warned that failure to obey
9 with the court's order would result in dismissal of her petition, and this satisfies the "consideration
10 of the alternatives" requirement. *Id*; *Malone*, 833 F.2d at 132-33. The court's January 6, 2012 order
11 expressly stated as follows:

12 It is noted that Petitioner bears the responsibility of prosecuting this
13 case. Petitioner is obligated to inform the court and Respondent of
14 any change of address and must comply with the court's orders in a
15 timely manner. Failure to do so may result in dismissal of this action
16 for failure to prosecute pursuant to Federal Rule of Civil Procedure
17 41(b).

18 Order to Show Cause, January 6, 2012, ECF No. 14. Thus, Petitioner had sufficient warning that
19 dismissal would result from her noncompliance with the court's order.

20 IV. CONCLUSION

21 For the foregoing reasons, the petition for writ of habeas corpus is hereby
22 DISMISSED. If Petitioner wishes to appeal this decision, a certificate of appealability must issue.
23 28 U.S.C. § 2253(c); FED. R. APP. P. 22(b). A certificate of appealability may issue under 28 U.S.C.
24 § 2253 "if the applicant has made a substantial showing of the denial of a constitutional right. 28
25 U.S.C. § 2253(c)(2). The certificate of appealability must "indicate which specific issue or issues
26 satisfy" the requirement. 28 U.S.C. § 2253(c)(3). A certificate of appealability should be granted
for any issue that Petitioner can demonstrate is "debatable among jurists of reason," could be
resolved differently by a different court, or is "adequate to deserve encouragement to proceed

1 further.” *Jennings v. Woodford*, 290 F.3d 1006, 1010 (9th Cir. 2002) (quoting *Barefoot v. Estelle*,
2 463 U.S. 880, 893 (1983)). In this case, Petitioner failed to make a substantial showing with respect
3 to any of the claims presented. A certificate of appealability is therefore DENIED. *See* 28 U.S.C.
4 § 2253(c)(2).

5 Accordingly, IT IS HEREBY ORDERED that:

- 6 1. Petitioner’s June 29, 2010 petition for writ of habeas corpus
7 pursuant to 28 U.S.C. § 2254 be denied; and
- 8 2. A certificate of appealability shall not issue.
- 9 3. In addition to serving both parties at their addresses of record,
10 the Clerk of Court is directed to serve Petitioner at the
11 following address:

12 Sarah Elizabeth Dutra
13 524 Florence Drive
14 Vacaville, CA 95688

15 DATED: March 13, 2012

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17 CHARLENE H. SORRENTINO
18 UNITED STATES MAGISTRATE JUDGE
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