

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

JEROME McCACKEN,

Petitioner,

v.

Civil No. 2:09-CV-15029
HONORABLE LAWRENCE P. ZATKOFF
UNITED STATES DISTRICT JUDGE

GREG McQUIGGIN,

Respondent,

/

OPINION AND ORDER OF SUMMARY DISMISSAL

Jerome McCracken, (“Petitioner”), presently confined at the Straits Correctional Facility in Kincheloe, Michigan, has filed a *pro se* petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, in which he challenges his conviction for assault with intent to commit murder, M.C.L.A. 750.83; felon in possession of a firearm, M.C.L.A. 750.224f; and possession of a firearm in the commission of a felony, M.C.L.A. 750.227b.

Petitioner has previously filed a petition for writ of habeas corpus challenging these convictions, which remains pending before Judge Arthur J. Tarnow. *See McCracken v. McQuiggin*, No. 2:09-CV-12517. A decision has not yet been rendered in that case. For the reasons stated below, the Court will dismiss the current petition as duplicative of that petition.

The Court will dismiss this petition, because it is duplicative of the petition that is currently pending before Judge Tarnow. A suit is duplicative, and thus subject to dismissal, if the claims, parties, and available relief do not significantly differ between the two actions. *See Barapind v. Reno*, 72 F. Supp. 2d 1132, 1145 (E.D. Cal. 1999)(internal citations omitted). Petitioner’s current habeas petition is subject to dismissal as being duplicative of his still pending first habeas petition,

because both cases seek the same relief. *Id. See also Davis v. U.S. Parole Com'n*, 870 F. 2d 657 (Table), No. 1989 WL 25837, * 1 (6th Cir. March 7, 1989)(district court can properly dismiss a habeas petition as being duplicative of a pending habeas petition, where the district court finds that the instant petition is essentially the same as the earlier petition); *Christy v. Lafler*, No. 2005 WL 3465844, * 1 (E.D. Mich. December 19, 2005)(same).

Accordingly, the Court **DISMISSES WITHOUT PREJUDICE** the petition for writ of habeas corpus. This dismissal is without prejudice to petitioner re-filing the pleadings that he submitted in this case under Case File No. 2:09-CV-12517.

S/Lawrence P. Zatkoff
LAWRENCE P. ZATKOFF
UNITED STATES DISTRICT JUDGE

Dated: January 14, 2010

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this Order was served upon the attorneys of record by electronic or U.S. mail on January 14, 2010.

S/Marie E. Verlinde
Case Manager
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