

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

BILLINGS DIVISION

FILED
BILLINGS DIV.

2010 APR 19 PM 12 02

PATRICIA E. DUFFY, CLERK

BY _____
DEPUTY CLERK

DAVID OMMUNDSON,

Plaintiff,

vs.

MIKE MAHONEY; ATTORNEY
GENERAL OF THE STATE OF
MONTANA,

Respondents.

CV 09-150-BLG-RFC

ORDER ADOPTING FINDINGS
AND RECOMMENDATION OF
U.S. MAGISTRATE JUDGE

United States Magistrate Judge Carolyn Ostby has entered Findings and Recommendation (*Doc. 13*) on Petitioner David Ommundson's Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254. With regard to Counts 1, 2, and 3, Magistrate Judge Ostby recommends they be dismissed.

Upon service of a magistrate judge's findings and recommendation, a party has 14 days to file written objections. 28 U.S.C. § 636(b)(1). Ommundson has filed timely objections. *Doc. 15*. Accordingly, the Court must make a *de novo* determination of those portions of the Findings and Recommendations to which objection is made. 28 U.S.C. § 636(b)(1).

After a de novo review, the Court determines the Findings and Recommendation of Magistrate Judge Ostby are well grounded in law and fact and HEREBY ORDERS they be adopted in their entirety.

Based upon the record in Ommundson's indecent exposure case, it is apparent that Ommundson fully exposed himself to Officer Floth. A rational juror could have found that Ommundson's genitals were exposed, that he knew his nudity on a public trail would be an affront to persons using the trail, and he chose to be nude for the purpose of harassing persons using the trail. The jury's verdict and the Montana Supreme Court's decision were both more than reasonable.

Accordingly, **IT IS HEREBY ORDERED** that Claims 1, 2, and 3 are **DENIED**. A certificate of appealability is **DENIED** as to Claims 1, 2, and 3.

The Clerk of Court shall notify the parties of the making of this Order.

DATED this 14 day of April, 2010


RICHARD F. CEBULL
UNITED STATES DISTRICT JUDGE