

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BILLINGS DIVISION**

**FILED**

MAR 23 2020

Clerk, U S District Court  
District Of Montana  
Billings**JOHN W. COLLIER,****Petitioner,****vs.****STATE OF MONTANA,****Respondent.****CV 15-79-BLG-SPW****ORDER ADOPTING  
MAGISTRATE'S FINDINGS  
AND  
RECOMMENDATIONS**

The United States Magistrate Judge filed Findings and Recommendations on March 2, 2020. (Doc. 68.) The Magistrate recommended the Court deny the State of Montana's motion to dismiss John Collier's amended petition for writ of habeas corpus (Doc. 62) and conditionally grant the petition (Doc. 25). (Doc. 68 at 41.)

Pursuant to 28 U.S.C. § 636(b)(1), parties are required to file written objections within 14 days of the filing of the Magistrate's Findings and Recommendations. No objections were filed. When neither party objects, this Court reviews the Magistrate's Findings and Recommendations for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000).

After reviewing the Findings and Recommendations, this Court does not find that the Magistrate committed clear error. Collier has established cause and prejudice to excuse his procedural default under *Martinez v. Ryan*, 566 U.S. 1 (2012) because, in the initial collateral review proceeding, Collier's counsel effectively abandoned the claim for ineffective assistance of counsel without providing notice to the court, the state, or Collier. *See* (Doc. 68 at 21–29). Moreover, Collier has established a claim for ineffective assistance of counsel under *Strickland v. Washington*, 466 U.S. 667 (1984). Collier's trial counsel failed to perform a meaningful investigation into Collier's claim of diminished mental capacity where the circumstances called for one. Collier has demonstrated that this failure fell outside the wide range of professionally competent assistance and that he was prejudiced as a result. *See* (Doc. 68 at 29–40). Accordingly,

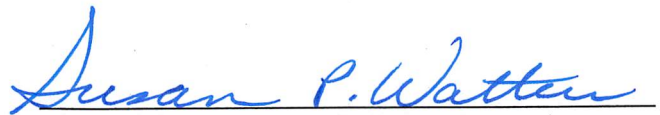
**IT IS ORDERED** that the proposed Findings and Recommendations entered by the United States Magistrate Judge (Doc. 68) are **ADOPTED IN FULL**.

**IT IS FURTHER ORDERED:**

1. The State of Montana's Motion to Dismiss Petitioner John W. Collier's Amended Petition for Writ of Habeas Corpus (Doc. 62) is **DENIED**.
2. In relation to Collier's remaining ineffective assistance of trial counsel claim, his Amended Habeas Petition (Doc. 25) is **CONDITIONALLY GRANTED**.

3. Within 60 days, this matter shall be remanded to Montana's Fourteenth Judicial District Court, Musselshell County, to allow the District Court to schedule a new sentencing hearing. If the State of Montana fails to meet the deadline for remand, Collier shall be released from custody.

DATED this 23<sup>rd</sup> day of March, 2020.

  
SUSAN P. WATTERS  
United States District Judge