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

KEITH E. DOYLE,)	CV09-58-BU-RFC
)	
Petitioner,)	
)	
vs.)	
)	ORDER ADOPTING FINDINGS
)	AND RECOMMENDATIONS OF
CAPTAIN DAN O'FALLON,)	U.S. MAGISTRATE JUDGE
Great Falls Regional Prison;)	(Claim 5)
ATTORNEY GENERAL OF)	
THE STATE OF MONTANA,)	
)	
Respondents.)	
_____)	

On February 5, 2010, United States Magistrate Judge Carolyn Ostby entered Findings and Recommendation with regard to only Claim 5. Magistrate Judge Ostby recommends Claim 5 of the Petition should be dismissed with prejudice.

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). In this matter, no party filed objections to the February 5, 2010 Findings and Recommendation. Failure to object to a magistrate judge's findings and recommendation waives all

objections to the findings of fact. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1999). However, failure to object does not relieve this Court of its burden to review de novo the magistrate judge's conclusions of law. *Barilla v. Ervin*, 886 F.2d 1514, 1518 (9th Cir. 1989).

After an extensive review of the record and applicable law, this Court finds Magistrate Judge Ostby's Findings and Recommendation are well grounded in law and fact and adopts them in their entirety.

Claim 5 alleges that the trial court violated Petitioner's Fourteenth Amendment right to a fair trial by erroneously denying his motion for mistrial and coercing the jury to reach a verdict when the jury repeatedly stated that it was deadlocked.

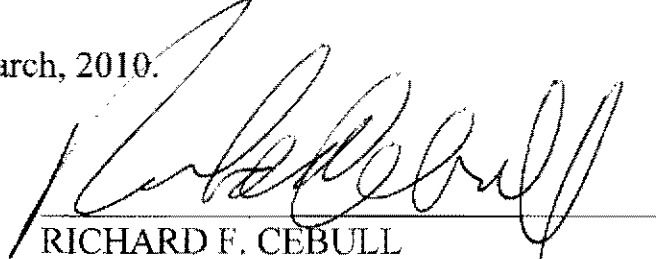
Petitioner's Claim 5 is procedurally barred. Procedural default is clear on the face of the petition because the appellate brief does not cite or refer to federal law and because the Montana Supreme Court's opinion on postconviction review declines to consider the claim for a second time.

Accordingly, **IT IS HEREBY ORDERED** that Claim 5 of the Petition is **DISMISSED WITH PREJUDICE** as procedurally defaulted without excuse. A certificate of appealability as to Claim 5 is **DENIED**.

The Clerk of Court is directed to enter Judgment in favor of Respondents and close this file.

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

DATED the 5 day of March, 2010.



RICHARD F. CEBULL
UNITED STATES DISTRICT JUDGE