

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

FILED
BILLINGS DIV.
2010 MAY 18 PM 3 22
PATRICK E. DUFFY, CLERK
BY _____
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HUGH J. ROBINSON,)
)
Petitioner,)
)
vs.)
)
BUTTE CITY COURT,)
)
Respondent.)
_____)

CV-10-14-BU-RFC

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

On April 15, 2010, United States Magistrate Judge Carolyn Ostby entered Findings and Recommendation. Magistrate Judge Ostby recommends Robinson’s letter, construed as a petition for writ of habeas corpus under 28 U.S.C. § 2241, should 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). On April 27, 2010, Robinson filed a “Notice of Appeal.” *Doc. 5*. The Court construes this “Notice of Appeal” as an objection to the Magistrate Judge’s Findings and Recommendation.

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.

It is not within this Court's authority to do what Robinson asks. The United State Supreme Court has held that "[s]ince the beginning of this country's history Congress has, subject to few exceptions, manifested a desire to permit state courts to try state cases free from interference by federal courts." *Younger v. Harris*, 401 U.S. 37, 43 (1971). City courts are established by the legislature of the State of Montana. Mont. Code Ann. § 3-1-101.

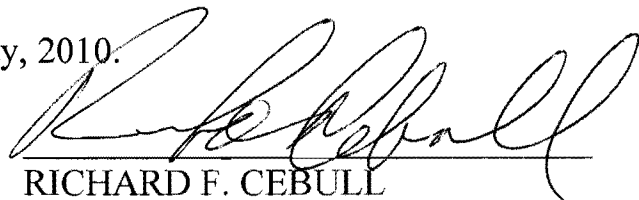
After reviewing Robinson's objections, this Court cannot stress enough that Robinson must pursue his remedies in the state's court system, and do so in accordance with the state's procedural law, before he may ask a federal court to consider his claims. In *Younger*, 401 U.S. at 45, the United States Supreme Court explained: "[T]he normal thing to do when federal courts are asked to enjoin pending proceedings in state courts is not to issue such injunctions."

Accordingly, **IT IS HEREBY ORDERED** that Robinson's letter, construed as a petition for writ of habeas corpus under 28 U.S.C. 2241 is DISMISSED. The Clerk of Court is directed to enter by separate document a judgment of dismissal. A certificate of appealability is DENIED.

If Petitioner intends to appeal this decision to the Ninth Circuit Court of Appeals, he must file another notice of appeal.

The Clerk of Court shall notify the parties of the making of this Order and close this case accordingly.

DATED this 10 day of May, 2010.



RICHARD F. CEBULL
UNITED STATES DISTRICT JUDGE