

**FILED**

**NOV 09 2011**

PATRICK E. DUFFY, CLERK

By \_\_\_\_\_  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
HELENA DIVISION

DUSTY W. BARGER,	)	CV 11-57-H-DWM-RKS
also known as Dusty W. Leetch,	)	
	)	
Petitioner,	)	
	)	
vs.	)	ORDER
	)	
STATE OF MONTANA and	)	
ATTORNEY GENERAL OF THE	)	
STATE OF MONTANA,	)	
	)	
Respondent.	)	
_____	)	

On September 30, 2011, Petitioner Dusty Barger filed his petition, seeking a writ of habeas corpus under 28 U.S.C. § 2254. Mr. Barger is a state parolee proceeding pro se.

Magistrate Judge Keith Strong issued his findings and recommendation on October 3, 2011. (Dkt # 3). Judge Strong recommended denying the petition on the ground that it was Mr. Barger's second petition under § 2254. Id. Mr. Barger

did not file any objections to Judge Strong's findings and recommendation.

Accordingly, the Court reviews the findings and recommendation for clear error.

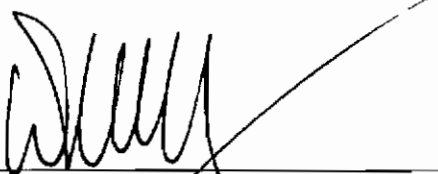
McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981).

The Court agrees with Judge Strong's findings and recommendation. The Court denied Mr. Barger's first petition under § 2254 on January 12, 2011. See Barger v. Mahoney, CV 10-53-H-DWM-RKS (dkt # 5). Since Mr. Barger did not move the Ninth Circuit for an order allowing this Court to consider his second petition, the Court does not have jurisdiction to consider it. 28 U.S.C. § 2244(b)(3)(A); Burton v. Stewart, 549 U.S. 147, 149 (2007) (per curiam). And, as Judge Strong also recommended, a certificate of appealability is not warranted.

Accordingly, IT IS HEREBY ORDERED that Petitioner Dusty W. Barger's petition for writ of habeas corpus (dkt # 1) is DISMISSED. The Clerk of Court is directed to enter by separate document a judgment of dismissal.

IT IS FURTHER ORDERED that a certificate of appealability is DENIED.

DATED this 9<sup>th</sup> day of November 2011.

  
\_\_\_\_\_  
Donald W. Molloy, District Judge  
United States District Court