

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

BILLINGS DIVISION

DOUGLAS E. HERMAN,)	CV-06-142-BLG-RFC
)	
Petitioner,)	
)	
vs.)	
)	ORDER ADOPTING FINDINGS AND RECOMMENDATIONS OF U.S. MAGISTRATE JUDGE
MIKE MAHONEY; ATTORNEY GENERAL OF THE STATE OF MONTANA,)	
)	
Respondents.)	
)	

On November 17, 2008, United States Magistrate Judge Carolyn S. Ostby entered her Findings and Recommendation. Magistrate Judge Ostby recommends that Herman’s Petition should be denied.

Upon service of a magistrate judge’s findings and recommendation, a party has 10 days to file written objections. 28 U.S.C. § 636(b)(1).¹ In this matter, no party filed objections to the November 17, 2008 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).

¹In prisoner cases, this Court extends the time to object to twenty days in order to take into account the Supreme Court’s ruling in *Houston v. Lack*, 487 U.S. 266, 270-71 (1988), and the somewhat greater mailing time that is involved in sending documents into and out of a prison facility.

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.

Herman alleged four grounds for relief. The first three fail because Herman misunderstands state law and, when the state law is taken into account, he cannot show the violation of a federal right. Herman was legitimately designated as a persistent felony offender and the sentence did not exceed the trial court's authority, and he was not entitled to be placed on probation. *See* Mont. Code Ann. § 46-18-502(1) (2001). Herman's fourth claim fails because Herman did not take advantage of two opportunities to allege facts to support his claim that counsel was instructed to file a notice of appeal but did not do so. Consequently, Herman has not made any showing that he was deprived of a federal right.

Accordingly, **IT IS HEREBY ORDERED** Herman's Petition (*Doc. 1*) is **DENIED**. A certificate of appealability is **DENIED**.

The Clerk of Court shall notify the parties of the making of this Order and enter judgment, by separate document, in favor of Respondents and against Herman.

DATED the 11th day of December, 2008.

/s/ Richard F. Cebull
RICHARD F. CEBULL
UNITED STATES DISTRICT JUDGE