

IN THE UNITED STATES DISTRICT COURT

FILED
BILLINGS DIV.

FOR THE DISTRICT OF MONTANA

2010 MAR 26 PM 3 04

BILLINGS DIVISION

PATRICK E. DUFFY, CLERK

BY _____

DEPUTY CLERK

SABAH MALLAK,)
)
Petitioner,)
)
vs.)
)
MIKE MAHONEY; ATTORNEY)
GENERAL OF THE STATE OF)
MONTANA,)
)
Respondents.)
)
 _____)

CV-07-53-BLG-RFC-CSO

**ORDER ADOPTING FINDINGS
AND RECOMMENDATIONS OF
U.S. MAGISTRATE JUDGE AND
CONDITIONALLY GRANTING
WRIT OF HABEAS CORPUS**

United States Magistrate Judge Carolyn S. Ostby has entered Findings and Recommendation on Mallak’s § 2254 petition (*Docs. 1, 6*) for writ of habeas corpus. Magistrate Judge Ostby recommends the petition be denied with respect to the burglary conviction, but granted as to the witness tampering conviction. Judge Ostby further recommends that Mallak be denied a certificate of appealability as to the burglary conviction.

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 objections were filed. 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), but 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).

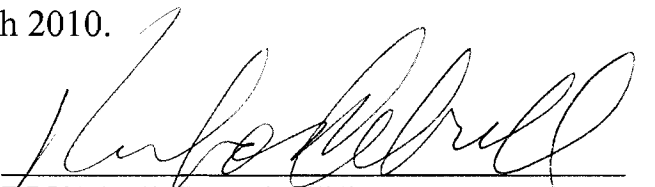
After reviewing the record and applicable law, this Court finds Magistrate Judge Ostby's Findings and Recommendation are well grounded in law and fact and adopts them in their entirety.

Accordingly, **IT IS HEREBY ORDERED:**

1. Mallak's petition (Docs. 1, 6) is **DENIED** with respect to the burglary conviction, but **GRANTED** with respect to the witness tampering conviction;
2. The judgment entered in Yellowstone County Cause No. DC-56-200-930 on November 23, 2001, is **VACATED** as to witness tampering only. The State of Montana may renew proceedings on that charge within sixty (60) days from the date of this Order. If the proceedings are not timely renewed, the State must permanently release Mallak from custody and collateral consequences that are based on his vacated conviction for witness tampering; and
3. Mallak is **DENIED** a certificate of appealability as to the burglary conviction.

The Clerk of Court is directed to enter judgment, by separate document, in favor of the State and against Mallak as to the burglary conviction and in favor of Mallak and against the State as to the witness tampering conviction.

DATED the 26th day of March 2010.



RICHARD F. CEBULL
UNITED STATES DISTRICT JUDGE