IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

BILLINGS DIVISION

SHERMAN P. HAWKINS,	
Petitioner,	**CV-08-25-BLG-RFC**
vs.	
MIKE MAHONEY; BOARD OF PARDONS AND PAROLE,	**ORDER ADOPTING FINDINGS AND RECOMMENDATIONS OF U.S. MAGISTRATE JUDGE**
Respondents.	

On September 10, 2008 United States Magistrate Judge Carolyn Ostby entered Findings and Recommendation (*Doc. 7*) with respect to of Hawkins' 28 U.S.C. § 2254 petition for writ of habeas corpus (*Doc. 1*). Magistrate Judge Ostby recommends that claims one and two be dismissed as unauthorized second or successive claims and that the third claim be denied on its merits.

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, Hawkins filed an objection on September 26, 2008. Hawkins' objections require this Court to 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).

[1]In 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.

To the extent Petitioner's objections are not merely restatements of the arguments contained in his Third Amended Petition, they are not well taken. Magistrate Judge Ostby correctly concluded that any further challenges to Petitioner's 1973 conviction will require leave from the Ninth Circuit Court of Appeals. Since Petitioner has not received leave to do so, the first two claims must be dismissed. Further, Magistrate Judge Ostby correctly concluded that the Board of Pardons and Parole did not violate Petitioner's procedural Due Process rights. Therefore, the third claim was correctly denied on its merits.

After a de novo review, the Court determines the Findings and Recommendation of Magistrate Judge Ostby are well grounded in law and adopts them in their entirety.

IT IS HEREBY ORDERED as follows:

(1) the first two claims in the Third Amended Petition and any claim regarding the regulatory change in 1994 are **DISMISSED** as successive claims filed without leave from the Court of Appeals;

(2) the third claim, regarding denial of parole in 2005 and 2007, is **DENIED** on its merits; and

(3) a certificate of appealability is **DENIED.**

The Clerk of Court shall notify the parties of the entry of this Order and enter by separate document a judgment of dismissal as to Petitioner's first two claims and a judgment in favor of Respondents and against Hawkins on his claim regarding denial of parole in 2005 and 2007.

DATED this 24th day of Dec, 2008.

RICHARD F. CEBULL
UNITED STATES DISTRICT JUDGE