

FILED
APR 02 2014
Clerk, U.S. District Court
District Of Montana
Billings

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

In re DONNIE NOLAN,

Petitioner.

Cause No. CV 14-15-BLG-SPW

ORDER

This action was filed in the United States District Court for the District of Montana, Billings Division, on February 14, 2014. Petitioner Donnie Nolan seeks a writ of habeas corpus under 28 U.S.C. § 2241. (Doc. 1). United States Magistrate Judge Carolyn Ostby filed Findings and a Recommendation regarding the status of Mr. Dolan's ability to currently obtain federal habeas relief under 28 U.S.C. § 2241 or other federal law. (Doc. 8). Pursuant to 28 U.S.C. § 636(b)(1), objections to the Findings and Recommendation entered by Judge Ostby were due March 31, 2014. Mr. Dolan submitted his Objections on March 27, 2014. (Doc. 9). Judge Ostby granted Mr. Nolan's motion to proceed *in forma pauperis* and recommended his Petition be dismissed for lacking any basis for federal habeas relief under the law. Mr. Nolan objects to the recommendation that his Petition be dismissed. When a party objects to any portion of the Findings and Recommendation issued by a Magistrate Judge, the district court must make a de

novo determination regarding that portion of the Magistrate Judge's report. 28 U.S.C. § 636(b)(1)(B); *McDonnell Douglas Corp. v. Commodore Bus. Mach. Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981).

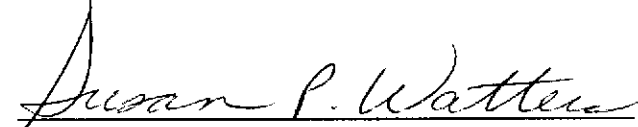
None of Mr. Dolan's objections address Judge Ostby's findings supporting her recommendation that the Petition be dismissed. Even so, after de novo review of Judge Ostby's Findings and Recommendation and Mr. Nolan's objections to the same, I agree with Judge Ostby's conclusion that Mr. Nolan's Petition must be dismissed because no basis for federal habeas relief under 28 U.S.C. § 2241, or any other federal law for that matter, exists at this time. Mr. Nolan has failed to demonstrate that his current custody on pending state charges is unconstitutional, which is required to prevail in a habeas petition. Mr. Nolan may raise claims against his federal charge(s) if and when he is brought into federal court and has an attorney. Because Mr. Nolan fails to make a showing that he is being deprived of a constitutional right, 28 USC 2253(c)(2), a certificate of appealability is not warranted.

Based on the foregoing, IT IS ORDERED that Judge Ostby's Findings and Recommendation, (Doc. 8), are ADOPTED IN FULL. Mr. Dolan's Petition is DISMISSED.

IT IS FURTHER ORDERED a certificate of appealability is DENIED.

IT IS FURTHER ORDERED that the Clerk of Court shall enter by a separate document judgment of dismissal and shall close this case.

DATED this 2nd day of April, 2014.



Susan P. Watters
United States District Court