

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

FILED

MAR 25 2019

Clerk, U S District Court
District Of Montana
Billings

ZACHARY G. SHAFFER,

Petitioner,

vs.

DOUGLAS FENDER, ATTORNEY
GENERAL OF THE STATE OF
MONTANA,

Respondents.

CV 18-06-BLG-SPW

ORDER ADOPTING
FINDINGS AND
RECOMMENDATIONS

Petitioner Zachary G. Shaffer, appearing pro se, seeks habeas corpus relief pursuant to 28 U.S.C. §2254. Shaffer challenges his conviction in the Twenty-Second Judicial District Court, Carbon County, Montana., for felony assault on a police officer. (Doc. 1 at 2-3).

Pending before the Court are United States Magistrate Judge Timothy Cavan's findings and recommendations on Shaffer's petition. (Doc. 8). Judge Cavan recommends this Court dismiss Shaffer's habeas petition with prejudice because it is procedurally defaulted. (Doc. 8 at 18). Specifically, Judge Cavan held Shaffer's petition was procedurally defaulted because the Montana Supreme Court has not considered the merits of Shaffer's petition. (Doc. 8 at 4). Judge Cavan further held Shaffer had not shown adequate grounds for this Court to

excuse the default and review the petition's claims. (Doc. 8 at 5). Shaffer filed a timely objection to the findings and recommendations, entitling him to de novo review. 28 U.S.C. §636(b)(1); Fed. R. Civ. P. 72(b)(3).

Shaffer's objection states his constitutional rights are being denied based on procedure. (Doc. 9). The Court will decline to comment on the merits of Shaffer's petition. The Court cannot review a procedurally defaulted petition unless there is adequate ground to excuse the default. Judge Cavan concluded there was not adequate ground to excuse the default and the Court agrees.

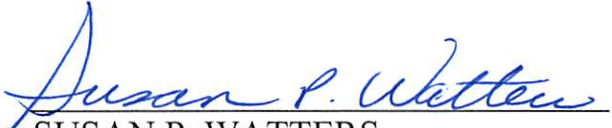
IT IS ORDERED the proposed findings and recommendations entered by United States Magistrate Judge Cavan (Doc. 8) are ADOPTED IN FULL.

IT IS FURTHER ORDERED Shaffer's petition (Doc. 1) is DISMISSED with prejudice.

IT IS FURTHER ORDERED the Clerk of Court is directed to enter by separate document a judgment in favor of Respondents and against Petitioner.

IT IS FURTHER ORDERED a certificate of appealability is DENIED.

DATED this 25th day of March, 2019.


SUSAN P. WATTERS
United States District Judge