

IN THE UNITED STATES DISTRICT COURT

FILED
BILLINGS DIV.

FOR THE DISTRICT OF MONTANA

2009 FEB 19 AM 11 46

PATRICK E. DUFFY, CLERK

BUTTE DIVISION

BY _____
DEPUTY CLERK

IN RE ROMAN SONNY MCCARTHY,)

CV-08-93-BU-RFC-CSO

Petitioner)

_____)

On December 17, 2008, United States Magistrate Carolyn S. Ostby entered her Findings and Recommendation (*Doc. 3*) with respect to documents filed by McCarthy construed as a 28 U.S.C. § 2241 petition for writ of habeas corpus (*Doc. 1*). Magistrate Judge Ostby recommends this Court deny McCarthy's petition because it has no authority to grant the relief McCarthy requests.

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). In this matter, McCarthy filed a document entitled Motion for Extension of Time (*Doc. 5*) on January 13, 2009. The Court construes this filing as an objection to the Findings and Recommendation. As such, the Court must 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).

McCarthy requests more time to gather information for his federal habeas

petition. However, no matter how much time McCarthy is granted, he will be unable to show how this Court has authority to order a state court to provide copies of documents and transcripts. Accordingly, McCarthy's objection is not well taken.

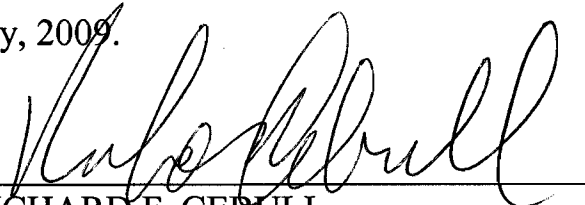
After a review of the record and applicable law, this Court finds Magistrate Judge Ostby's Findings and Recommendation are well grounded in law and fact and adopts them in their entirety.

IT IS HEREBY ORDERED that McCarthy's petition for writ of habeas corpus (*Doc. 1*) is **DENIED**.

IT IS FURTHER ORDERED that all pending motions are MOOT.

The Clerk of Court is directed to enter judgment, by separate document, against McCarthy.

DATED the 19 day of February, 2009.



RICHARD F. CEBULL
UNITED STATES DISTRICT JUDGE