

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

FILED

2010 JUN 16 AM 1 14

PATRICK E. DUFFY, CLERK

BY \_\_\_\_\_

DEPUTY CLERK

LEWIS ELDON HUFFINE,

Petitioner,

vs.

SAM LAW; JOHN BROWN;  
ATTORNEY GENERAL OF  
THE STATE OF MONTANA,

Respondents.

Cause No. CV 10-24-BU-SEH-RKS

RECOMMENDATION AND  
ORDER

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On May 13, 2010, Petitioner Lewis Eldon Huffine filed a petition for writ of habeas corpus. On May 24, 2010, he was ordered either to pay the filing fee of \$5.00 or move to proceed in forma pauperis. He was specifically advised that failure to do so could result in dismissal of his this action. Order to Pet'r (doc. 2) at 1 (citing 28 U.S.C. § 1914(a)); *id.* at 2 ¶ 1.

On June 9, 2010, Petitioner again asserted that he is not required to pay a filing fee or move to proceed in forma pauperis. Am. Pet. (doc. 3)

at 1, 12.

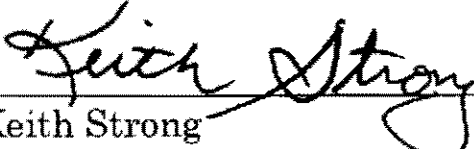
Petitioner has repeatedly refused to comply with this Court's orders to pay the filing fee or move to proceed in forma pauperis. As a result, at least three prior habeas petitions have been dismissed. E.g., Order (doc. 5) at 2 ¶ 1, Huffine v. Mahoney, No. CV 09-63-BU-SEH (D. Mont. Dec. 2, 2009); Order (doc. 4) at 2 ¶ 1, Huffine v. Eighteenth Jud. Dist. Court, No. CV 08-13-BU-SEH (D. Mont. May 20, 2008); Order (doc. 8) at 2, Huffine v. Yellowstone County Detention Ctr., No. CV 07-85-BLG-RFC (D. Mont. Aug. 8, 2007). At one time Petitioner filed motions to proceed in forma pauperis, but they were denied because his report of his own financial status varied significantly from a Presentence Report prepared in a federal criminal case. E.g., Findings and Recommendation (doc. 4) at 1-2, Huffine v. Cashell, No. CV 08-14-BU-SEH-RKS (D. Mont. Apr. 7, 2008).

A certificate of appealability should be denied. Reasonable jurists could only conclude that all habeas petitioners must pay the filing fee or move to proceed in forma pauperis. 28 U.S.C. § 1914(a); Slack v. McDaniel, 529 U.S. 473, 484 (2000). Further, reasonable jurists could only conclude that Petitioner has had more than sufficient notice that his

refusal to pay the filing fee or move to proceed in forma pauperis in a habeas action would result in dismissal of his case.

Accordingly, the Court RECOMMENDS the following order should be entered by Judge Haddon.

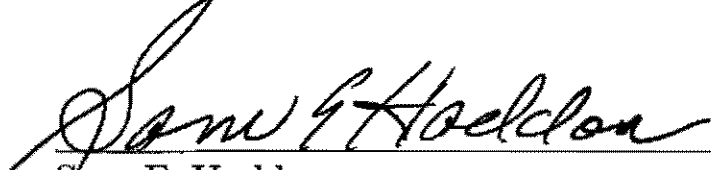
DATED this 11<sup>th</sup> day of June, 2010.

  
\_\_\_\_\_  
Keith Strong  
United States Magistrate Judge

**ORDER**

1. This action is DISMISSED for failure to pay the filing fee or move to proceed in forma pauperis.
2. The Clerk of Court shall enter, by separate document, a judgment of dismissal.
3. A certificate of appealability is DENIED.

DATED this 15<sup>th</sup> day of June, 2010.

  
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Sam E. Haddon  
United States District Court