

FILED

OCT 16 2012

Clerk, U.S. District Court
District Of Montana
Missoula

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

KEITH DOYLE,)	CV 12-39-BU-DLC
)	
Petitioner,)	
)	
vs.)	ORDER
)	
STATE OF MONTANA,)	
)	
Respondent.)	
_____)	

United States Magistrate Judge Carolyn S. Ostby entered her Findings and Recommendation in this matter on June 20, 2012, recommending the dismissal of Doyle’s June 14, 2012 Petition for Writ of Habeas Corpus and denial of any certificate of appealability. Doyle filed a “Motion for Leave to File a[n] Amended Petition for Writ of Habeas Corpus,” which will be construed as objections under 28 U.S.C. § 636(b)(1). Essentially, he objects to Judge Ostby’s determination that amendment would be futile. Doyle is entitled to de novo review of this finding.

28 U.S.C. § 636(b)(1).

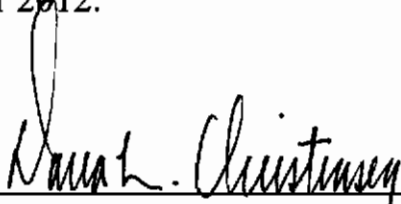
There is no amendment that would permit this Court to consider Doyle's claims. A district court lacks jurisdiction to consider a second or successive challenge to a conviction unless the Court of Appeals authorizes it to do so. 28 U.S.C. § 2244(b)(3)(A). The Court of Appeals has not authorized the Court to consider a second petition here. Thus, the Court has no jurisdiction over Doyle's claims. Moreover, Doyle states in his objections that the current petition raises "the same exact issues untouched...which this court originally dismissed." (Doc. 6 at 2.) Under 28 U.S.C. § 2244(b)(1), "a claim presented in a second...habeas corpus application under section 2254 that was presented in a prior application shall be dismissed." To the extent that Doyle seeks to reopen proceedings on the first petition under Federal Rule of Civil Procedure 60(b), he has asserted no "extraordinary circumstances" that would justify reopening of the final judgment in this matter, which was affirmed by the Court of Appeals. *Gonzalez v. Crosby*, 545 U.S. 524, 534–35 (2005).

There being no clear error in the remainder of Judge Ostby's analysis, IT IS
HEREBY ORDERED:

1. Judge Ostby's Findings and Recommendation (doc. 3) are ADOPTED in full.

2. The Petition (doc. 1) is DISMISSED.
3. A certificate of appealability is DENIED.
4. All pending motions are DENIED as moot.
5. The Clerk of Court is directed to enter a judgment of dismissal.

DATED this 16th day of October 2012.



Dana L. Christensen, District Judge
United States District Court