

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

FILED

MAY 08 2014

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

PAUL F. BLAKELY,

Petitioner,

vs.

STATE OF MONTANA and
WARDEN,

Respondents.

CV 14-20-BU-DWM-JCL

ORDER

This matter comes before the Court on the proposed Findings and Recommendations entered by United States Magistrate Judge Jeremiah C. Lynch, (Doc. 5), regarding the Petition for writ of *habeas corpus* brought under 28 U.S.C. § 2254 by Paul F. Blakely, (Doc. 1). Because Blakely is a prisoner, upon filing, this matter was referred to Judge Lynch. *See* L.R. 72.2(a). Judge Lynch filed his proposed Findings and Recommendations regarding the Petition on April 4, 2014. (Doc. 5 at 3.) “Within fourteen days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court.” 28 U.S.C. § 636(b)(1). Because the statutory objections period states that a party may file objections within a specified time

after service of the findings and recommendations, and service of the Findings and Recommendations at issue was made by mail and electronic means, three days are added after the period would otherwise expire. *See* Fed. R. Civ. P. 6(d).

Accordingly, written objections to Judge Lynch's proposed Findings and Recommendations were due April 21, 2014. No objections were timely filed.

When no party objects, the Court reviews the findings and recommendations of a United States Magistrate Judge for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error is present only if the Court is left with a "definite and firm conviction that a mistake has been committed." *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000).

Judge Lynch's report contains no mistake of fact or law and will be adopted in-full. This Court, as a federal court, lacks jurisdiction to hear Blakely's argument that he should be allowed to withdraw a guilty plea that he entered in state court. Blakely's Petition will therefore be dismissed without prejudice for lack of jurisdiction. Because Blakely's Petition fails to make any substantive showing that he is entitled to relief, a Certificate of Appealability will be denied.

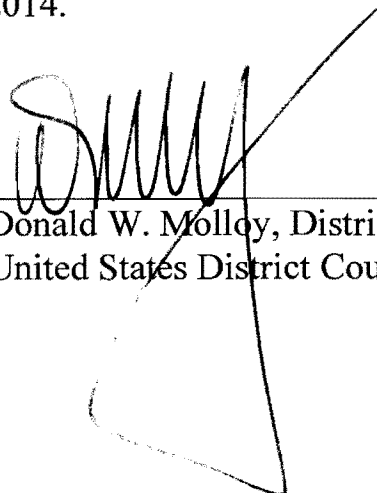
IT IS ORDERED:

- (1) The proposed Findings and Recommendations entered by United States Magistrate Judge Jeremiah C. Lynch, (Doc. 5), are ADOPTED

IN-FULL.

- (2) The Petition for writ of *habeas corpus* brought by Petitioner Paul F. Blakely, (Doc. 1), is DISMISSED WITHOUT PREJUDICE for lack of jurisdiction.
- (3) Blakely's Motion to Proceed *in Forma Pauperis*, (Doc. 4), is DENIED AS MOOT.
- (4) The Clerk of Court shall enter by separate document a judgment of dismissal, pursuant to Federal Rule of Civil Procedure 58, and close this case.
- (5) A Certificate of Appealability is DENIED. The Clerk of Court shall immediately process any appeal filed by Petitioner Blakely.

DATED this 8th day of May, 2014.



Donald W. Molloy, District Judge
United States District Court