

FILED

APR 09 2015

Clerk, U.S. District Court
District Of Montana
MissoulaIN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION

SHANE LOUIS BURD,

Petitioner,

vs.

LEROY KIRKEGARD and ATTORNEY
GENERAL OF THE STATE OF
MONTANA,

Respondents.

CV 14-26-BU-DWM

ORDER

Petitioner Shane Louis Burd filed this action under 28 U.S.C. § 2254. He is a state prisoner proceeding pro se. Magistrate Judge Jeremiah Lynch entered findings and recommendations on March 6, 2015, recommending the Court deny Burd's petition for lack of merit. (Doc. 8.) Burd did not file objections to Judge Lynch's findings and recommendation.

The Court reviews the findings and recommendations that are not specifically objected to for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists 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). The Court

finds no clear error with Judge Lynch's determination that the petition should be denied. Given the nature of Burd's claims, he should proceed under 42 U.S.C. § 1983 rather than 28 U.S.C. § 2254. Moreover, Burd cannot state a claim for violation of federal law.


Accordingly, IT IS ORDERED that the Findings and Recommendation (Doc. 8) is ADOPTED IN FULL. Burd's Petition (Docs. 1, 2, 7) is DENIED for lack of merit.

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

IT IS FURTHER ORDERED that a certificate of appealability is DENIED.

IT IS FURTHER ORDERED that pursuant to Fed. R. App. P. 24(a)(3)(A), the Court CERTIFIES that any appeal from this disposition would not be taken in good faith.

Dated this 9th day of April, 2015.



Donald W. Molloy, District Judge
United States District Court