

FILED

NOV 06 2014

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

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

RYAN P. MALONEY,

Petitioner,

vs.

LEROY KIRKEGARD and ATTORNEY
GENERAL OF THE STATE OF
MONTANA,

Respondents.

CV 14-56-BU-DWM-JCL

ORDER

Ryan P. Maloney is a state prisoner proceeding pro se. He petitions this Court for a writ of habeas corpus under 28 U.S.C. § 2254. Magistrate Judge Jeremiah Lynch recommends dismissing the petition for lack of exhaustion in state court. (Doc. 6.)

Maloney timely filed written objections to Judge Lynch's Findings and Recommendation. (Doc. 8.) On dispositive motions, the parties are entitled to *de novo* review of the specified findings or recommendations to which they object.

28 U.S.C. § 636(b)(1); *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981).

Judge Lynch determined that Maloney had not yet properly exhausted in state court all the claims raised in his petition. In his objections, Maloney does not provide evidence that he has properly exhausted his claims in state court; instead, he states that he “feels that going back to the same court that Pronounced this Sentence is a waste of Time and energy.” (Doc. 8 at 1.) This argument is without merit where a state prisoner must first exhaust in the state courts, in the manner prescribed by state law, all the claims he intends to make in federal court. *Rose v. Lundy*, 455 U.S. 509, 520 (1982); *see also* Pet. Instruction No. 5. Maloney was sentenced on July 17, 2014, and has not yet exhausted his claims in state court. (See Pet., Doc. 5 at 2–4.)

Accordingly, IT IS ORDERED that the Findings and Recommendation (Doc. 6) is ADOPTED IN FULL. Ryan P. Maloney’s Petition for Writ of Habeas Corpus (Docs. 1, 5) is DISMISSED for lack of exhaustion.

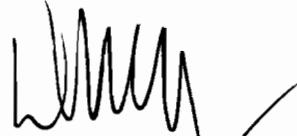
IT IS FURTHER ORDERED that the Clerk of Court is directed to enter by separate document a judgment of dismissal.

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

IT IS FURTHER ORDERED that Ryan P. Maloney’s Motion for Release

(Doc. 7) is DENIED as moot.

Dated this 6th day of November, 2014.



Donald W. Molloy, District Judge
United States District Court

