IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

D'WAYNE BAILEY, Petitioner, vs. LEROY KIRKEGARD, DOUGLAS FENDER, MIKE BATISTA, et. al., Respondents.	CV 16-24-GF-BMM-JTJ ORDER ADOPTING MAGISTRATE'S FINDINGS AND RECOMMENDATIONS

The Court agrees with Judge Johnston that 28 U.S.C. § 2254 fails to represent the proper vehicle to attempt to secure the relief that Bailey seeks. Bailey has another action pending before this Court, which the Court has construed as a civil action under 42 U.S.C. § 1983. Bailey may file an amended complaint in that matter. He should include all the claims he wishes to make, including his due process/denial of property claim.

The Court also agrees with the Magistrate that it lacks jurisdiction over the instant claims when styled as a habeas petition. The Court will dismiss the petition. (Doc. 1.) The Court will deny a certificate of appealability.

Therefore, it is **HEREBY ORDERED** that Judge Johnston's Order and Findings and Recommendations (Doc. 3) is **ADOPTED IN FULL**.

IT IS FURTHER ORDERED that:

(1) The Petition (Doc. 1) shall be **DENIED** for lack of jurisdiction;

(2) The Clerk of Court shall enter by separate document a judgment in favor of Respondents against Petitioner; and

(3) A certificate of appealability shall be **DENIED**.

DATED this 19th day of April, 2016.

Brian Morris
United States District Court Judge