

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

MICHAEL P. DUNSMORE,) CV 08-71-H-DWM-RKS
)
Petitioner,)
)
vs.) ORDER
)
MIKE MAHONEY; ATTORNEY GENERAL OF)
THE STATE OF MONTANA,)
)
Respondents.)
_____)

Petitioner Dunsmore has filed a Petition for Writ of Habeas Corpus challenging a decision of the Montana Board of Pardons and Parole. Most of the issues Petitioner raises are also pending in a petition before the Montana Supreme Court. Petitioner raises one issue that he has apparently not previously presented in any court.

United States Magistrate Judge Keith Strong conducted preliminary screening of the Petition as required by Rule 4 of

the Rules Governing Section 2254 cases in the United States District Courts. Under Rule 4, the Petition must be summarily dismissed "[i]f it plainly appears from the face of the petition and any attached exhibits that the petitioner is not entitled to relief in the District Court." If summary dismissal is not warranted, the judge must order the respondent to file an answer, motion, or other response or to take some other action as ordered by the judge.

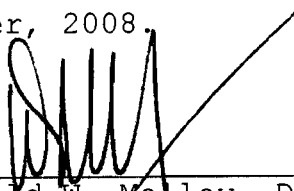
Judge Strong recommends that the Petition be dismissed without prejudice due to Petitioner's failure to present all of his claims in state court before filing in federal court, as required by Rose v. Landry, 455 U.S. 509, 520 (1982). Judge Strong also recommends that a certificate of appealability be denied.

Petitioner did not timely object and so has waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court will review the Findings and Recommendation 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). I can find no clear error with Judge Strong's Findings and Recommendations and therefore adopt them in full.

Accordingly, IT IS HEREBY ORDERED that the Petition is DISMISSED WITHOUT PREJUDICE for failure to exhaust state remedies, and a certificate of appealability is DENIED. The

Clerk of Court is directed to enter a judgment of dismissal, and all pending motions are DENIED as moot.

DATED this 17[✓] day of November, 2008.



Donald W. Molloy, District Judge
United States District Court

