

FILED

APR 18 2011

PATRICK E. DUFFY, CLERK

By _____
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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

HELENA DIVISION

WAYNE A. HUSSAR,)	CV 11-07-H-DWM-RKS
)	
)	
Petitioner,)	
v.)	ORDER
)	
MIKE MAHONEY, et al.,)	
)	
Respondents.)	
_____)	

Petitioner Hussar, a state prisoner proceeding pro se, brought this action pursuant to 28 U.S.C. § 2254. Petitioner alleges that his probation was revoked based on false statements made by his probation officer that he possessed a firearm and ammunition. Magistrate Judge Strong entered Findings and Recommendation in this matter on March 8, 2011. Judge Strong found Hussar's current incarceration is not the result of his possessing a firearm and ammunition. Accordingly, Judge Strong recommended the Amended Petition be denied on the

merits.

Petitioner timely objected to the Findings and Recommendation on both March 11, 2011, and March 14, 2011. He is therefore entitled to de novo review of the specified findings or recommendations to which he objects. 28 U.S.C. § 636(b)(1). The portions of the Findings and Recommendation not specifically objected to will be reviewed for clear error. McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Despite Petitioner's objections, I agree with Judge Strong's analysis and conclusions. Because the parties are familiar with the factual and procedural background, it will not be restated here.

The thrust of Petitioner's objection is that a review of his revocation proceedings will establish that his probation officer admitted there was no evidence that Petitioner possessed a firearm. This alleged admission, Petitioner asserts, leads to one conclusion: that he is wrongfully incarcerated. The Court does not reach such a conclusion. I agree with Judge Strong's finding that Petitioner admitted to some allegations in the Petition at the revocation hearing. These admissions included possession of alcohol, use of marijuana, violation of a municipal ordinance and failing to report to his probation officer. These infractions led the state trial court to find that Petitioner violated the terms of his

sentence, resulting in his commitment to the custody of the Department of Corrections for a period of three years.

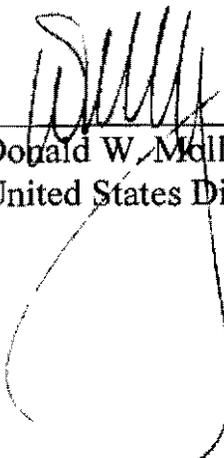
I find no clear error in Judge Strong's remaining findings and recommendations.

Accordingly, IT IS HEREBY ORDERED that the Findings and Recommendation (dkt #8) is adopted in full.

IT IS FURTHER ORDERED that Petitioner Hussar's Amended Petition (dkt #7) is DENIED on the merits. The Clerk of Court shall enter judgment in favor of Respondents and against Petitioner.

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

Dated this 8 day of April, 2011.



Donald W. Molloy, District Judge
United States District Court