

FILED

JUN 29 2011

PATRICK E. DUFFY, CLERK
By _____
DEPUTY CLERK, MISSOULA

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

ROBERT A. DaSILVA, JR.,)	CV 11-27-H-DWM-RKS
)	
Petitioner,)	
)	
vs.)	ORDER
)	
T. GREEN; ATTORNEY GENERAL)	
OF THE STATE OF MONTANA,)	
)	
Respondent.)	
_____)	

Petitioner Robert A. DaSilva, Jr., a state prisoner proceeding pro se, filed this action for a writ of habeas corpus under 28 U.S.C. § 2254 on May 24, 2011. On June 2, 2011, United States Magistrate Judge R. Keith Strong issued Findings and Recommendations and recommended that DaSilva's parole claim be denied and his challenge to his conviction be dismissed as unexhausted.

The 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 reviews 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 Recommendation.

Accordingly, IT IS HEREBY ORDERED that Judge Strong’s Findings and Recommendation (dkt #7) is adopted in full. Petitioner DaSilva’s parole claim is DENIED on the merits and the challenge to his conviction is DISMISSED WITHOUT PREJUDICE as unexhausted.

The Clerk of Court is directed to enter by separate document a judgment in favor of Respondents and against Petitioner on the parole claim and a judgment of dismissal on Petitioner’s challenge to his conviction.

IT IS FURTHER ORDERED that a certificate of appealability is DENIED on both claims as neither the merits nor the procedural questions warrant further proceedings.

Dated this 19th day of June, 2011.



Donald W. Molloy, District Judge
United States District Court