

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

FILED

DEC 17 2015

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

KEVIN WELNEL,

Petitioner,

vs.

LEROY KIRKEGARD,

Respondent.

CV 15-94-H-DLC-JTJ

ORDER

United States Magistrate Judge John T. Johnston entered findings and recommendations in this case on November 24, 2015, recommending that Petitioner Kevin Welnel's ("Welnel") petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 be dismissed and denied for lack of merit. Welnel did not object to the findings and recommendations, and so waived the right to *de novo* review of the record. 28 U.S.C. § 636(b)(1)(C). This Court reviews for clear error those findings and recommendations to which no party objects. *See McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 149 (1985). 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) (citations omitted).

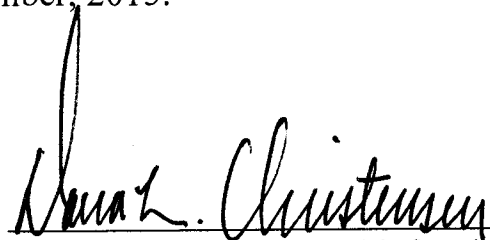
Having reviewed the findings and recommendations, the Court finds no clear error in Judge Johnston's conclusions that the Montana Parole Board had discretion to deny Welnel parole, and that he therefore cannot prevail on a due process claim in this habeas action.

Accordingly, IT IS ORDERED that Judge Johnston's findings and recommendations (Doc. 3) are ADOPTED IN FULL. Welnel's habeas petition (Doc. 1) is DENIED AND DISMISSED.

IT IS FURTHER ORDERED that the Clerk of Court shall enter, by separate document, a judgment of dismissal.

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

DATED this 17th day of December, 2015.



Dana L. Christensen, Chief Judge
United States District Court