

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

FILED

APR 04 2016

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

JOSHUA DANIEL WILSON,

Petitioner,

vs.

DOUGLAS FENDER,

Respondent.

CV 15-102-H-DLC-JTJ

ORDER

United States Magistrate Judge John T. Johnston entered findings and recommendations in this matter on January 27, 2016, recommending dismissal of Petitioner Joshua Daniel Wilson's ("Wilson") petition for writ of habeas corpus, filed pursuant to 28 U.S.C. § 2254. Wilson timely filed objections to the findings and recommendations on February 12, 2016, and so is entitled to de novo review of those findings and recommendations to which he specifically objects. 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).

Notwithstanding the above, “[w]here a petitioner’s objections constitute perfunctory responses argued in an attempt to engage the district court in a rehashing of the same arguments set forth in the original habeas petition, the applicable portions of the findings and recommendations will be reviewed for clear error.” *Rosling v. Kirkegard*, 2014 WL 693315 at *3 (D. Mont. Feb. 21, 2014) (citations omitted).

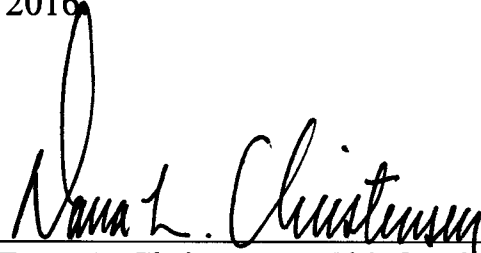
Having reviewed Wilson’s objections, the Court finds that he fails to articulate any specific issue with Judge Johnston’s reasoning, and instead reiterates his perception that both the state district court in Lewis & Clark County and the Montana Supreme Court have incorrectly interpreted Montana Code Annotated § 46-18-201. As Judge Johnston concluded, because this statute did not govern Wilson’s state revocation proceeding, Wilson’s federal habeas claim is unfounded. Accordingly, the Court reviews Judge Johnston’s findings and recommendations for clear error and, finding none,

IT IS ORDERED that Judge Johnston’s findings and recommendations (Doc. 6) are ADOPTED IN FULL. Wilson’s petition for writ of habeas corpus (Doc. 1) is DENIED and DISMISSED WITH PREJUDICE for failure to establish a constitutional claim.

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 4th day of April, 2016

A handwritten signature in black ink, reading "Dana L. Christensen". The signature is written in a cursive style with a large, looped initial "D".

Dana L. Christensen, Chief Judge
United States District Court