

FILED

APR 04 2016

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

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

KERMIT POULSON

Petitioner,

vs.

DERRICK BUDD, LEROY
KIRKEGARD,

Respondents.

CV 16-16-H-DLC-JTJ

ORDER

United States Magistrate Judge John T. Johnston entered findings and recommendations in this case on February 25, 2016, recommending that Petitioner Kermit Poulson's ("Poulson") petition for writ of habeas corpus, pursuant to 28 U.S.C. § 2254, be denied for lack of jurisdiction. Poulson 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).

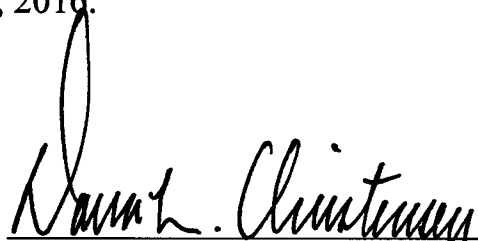
Having reviewed the findings and recommendations, the Court finds no clear error in Judge Johnston's conclusion that Poulson's claims are more appropriately brought pursuant to 42 U.S.C. § 1983, and that his habeas petition founded on these claims should be denied as a result.

Accordingly, IT IS ORDERED that Judge Johnston's findings and recommendations (Doc. 2) are ADOPTED IN FULL. Poulson's habeas petition (Doc. 1) is DENIED and DISMISSED for lack of jurisdiction.

IT IS FURTHER ORDERED that the Clerk of Court shall enter, by separate document, a judgment in favor of Respondents and against Petitioner.

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

DATED this 4th day of April, 2016.



Dana L. Christensen, Chief Judge
United States District Court