

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

ROBERTO CEDENO,

Petitioner,

vs.

STATE OF MONTANA, BUREAU
OF PRISONS AND PAROLE, DAN
O'FALLON,

Respondents.

CV-17-57-H-BMM-JTJ

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS

Petitioner Roberto Cedeno filed a Petition for Writ of Habeas Corpus with this Court. (Doc. 1.) Cedeno captioned the petition, however, for the Montana Supreme Court. *Id.* The Court ordered Cedeno to clarify whether he actually intended to file in this Court and provided him with the Court's standard habeas corpus form and the form motion to proceed in forma pauperis. (Doc. 2.) The Court informed Cedeno that it would dismiss the matter if he failed to comply with the Court's Order. *Id.* at 2. Cedeno has not complied. United States Magistrate Judge John Johnston entered Findings and Recommendations in this matter on July 17, 2017. (Doc. 3.) Neither party filed objections.

When a party makes no objections, the Court need not review *de novo* the proposed Findings and Recommendations. *Thomas v. Arn*, 474 U.S. 140, 149-52 (1986). This Court will review Judge Johnston's Findings and Recommendations, however, for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981).

Judge Johnston recommends that the Court dismiss Cedeno's petition under Rule 41(b) of the Federal Rules of Civil Procedure. (Doc. 3 at 1-2.) Judge Johnston notes that Rule 41(b) recognizes the Court's authority to dismiss actions for failure to prosecute or for failure to comply with court orders. *Id.* at 2. The Court must weigh five factors in dismissing a habeas petition due to failure to comply with a Court order. *Pagtalunan v. Galaza*, 291 F.3d 639, 640 (9th Cir. 2002). Judge Johnston identifies and analyzes these five factors and determines that the Court should dismiss Cedeno's petition. (Doc. 3.) The Court gave Cedeno an additional chance to comply with the Court's pleading requirements when it issued the Order represented by Document Two. Cedeno failed to take this opportunity.

The Court has reviewed Judge Johnston's Findings and Recommendations for clear error. The Court finds no error in Judge Johnston's Findings and Recommendations and adopts them in full.

IT IS ORDERED that Judge Johnston's Findings and Recommendations (Doc. 3), is ADOPTED IN FULL.

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 ALSO ORDERED that a certificate of appealability is DENIED.

DATED this 4th day of August, 2017.



Brian Morris
United States District Court Judge