

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

FILED
AUG 31 2017
Clerk, U.S. District Court
District Of Montana
Missoula

WAYNE A. HUSSAR, II,

Petitioner,

vs.

MATT RIEGHARD, LEO
GALLAGHER, and JUDGE
REYNOLDS,

Respondents.

CV 17-77-H-DLC-JTJ

ORDER

United States Magistrate Judge John Johnston entered his Order, Findings and Recommendations on July 17, 2017, recommending dismissal of Petitioner Wayne A. Hussar, II's ("Hussar") petition for writ of habeas corpus under 28 U.S.C. § 2254. Hussar timely filed objections and is therefore 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). Because the parties are familiar with the factual background of this case, it will not be repeated here.

Having reviewed Hussar's objections, the Court finds that he fails to articulate any specific legal error in Judge Johnston's Findings and Recommendations and, instead, attempts to reiterate his contention that there is newly discovered evidence that would exonerate him. However, as discussed by Judge Johnston, Hussar's legal proceedings in state court are still at their initial stages. Thus, even if Hussar could state a cognizable constitutional claim in this matter, he must first present such a claim to the state authorities. Consequently, because Hussar has failed to exhaust his state law remedies, including extraordinary, direct, and collateral review of his state court matter, his petition must be dismissed. *Rose v. Lundy*, 455 U.S. 509, 522 (1982) (district courts must dismiss habeas petitions containing unexhausted claims). As such, Hussar's objection is overruled.

Accordingly, there being no clear error in the remaining Findings and Recommendations, IT IS ORDERED that:

(1) Judge Johnston's Findings and Recommendations (Doc. 3) is ADOPTED IN FULL.

(2) The Petition (Doc. 1) is DISMISSED as unexhausted.

(3) The Clerk of Court is directed to enter by separate document a judgment in favor of Respondents and against Petitioner.

(4) A certificate of appealability is DENIED.

DATED this 31st day of August, 2017.

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

Dana L. Christensen, Chief Judge
United States District Court