

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

FILED

OCT 20 2017

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

SHAWN HOWARD WELLER,

CV 17-90-H-DLC-JTJ

Petitioner,

ORDER

vs.

MICHAEL FLETCHER, ATTORNEY
GENERAL OF THE STATE OF
MONTANA,

Respondents.

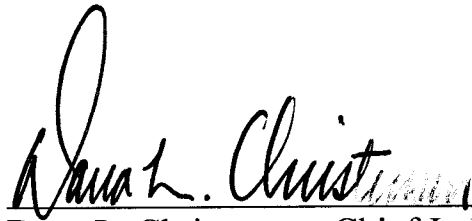
United States Magistrate Judge John T. Johnston entered his findings and recommendations in this case on September 15, 2017, recommending denial of Petitioner Shawn Howard Weller's ("Weller") petition for writ of habeas corpus under 28 U.S.C. § 2254. Weller failed to timely object to the findings and recommendations, and so waived the right to *de novo* review of the record. 28 U.S.C. § 636(b)(1). The Court will therefore review the record for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981).

Judge Johnston found, and this Court agrees, that Weller's petition should be denied for it being successive in nature and for it lacking merit. Weller's claim

challenging his 2012 revocation is untimely and successive. Further, the claim challenging a purported error in Judge Dayton's order and the denial of parole is not cognizable in a habeas petition and lacks merit.

Accordingly, IT IS ORDERED that Judge Johnston's Findings and Recommendations (Doc. 4) are ADOPTED IN FULL. Weller's Petition (Doc. 1) is DENIED and this matter DISMISSED. The Clerk of Court shall enter, by separate document, a judgment in favor of Respondents and against Petitioner. A certificate of appealability is DENIED.

DATED this 20th day of October, 2017.

A handwritten signature in black ink, appearing to read "Dana L. Christensen", is written over a horizontal line.

Dana L. Christensen, Chief Judge
United States District Court