

FILED

OCT 19 2017

Clerk, U.S. District Court
District Of Montana
Great Falls

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

DUANE LAJEUNESSE,

Petitioner,

vs.

ATTORNEY GENERAL STATE OF
MONTANA,

Respondents.

CV-17-94-H-BMM-JTJ

**ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS**

Petitioner Duane Lajeunesse filed a petition seeking a writ of habeas corpus pursuant to 28 U.S.C. § 2254 on September 26, 2017. (Doc. 1.) Mr. Lajeunesse alleges that he was held at the Lewis and Clark County Jail unlawfully because there was an unresolved bond holding him past the appropriate date. *Id.* at 4. Mr. Lajeunesse further alleges that his rights to due process were violated because he was never booked into jail on the probation revocation warrant from Custer County. *Id.* at 5. Finally, Mr. Lajeunesse alleges an illegal search from his probation officer. *Id.* at 6.

United States Magistrate Judge John Johnston entered Findings and Recommendations in this matter on September 28, 2017. (Doc. 4.) 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 determined that Mr. Lajeunesse's petition is premature in federal court because he has not exhausted his remedies in the state court system. (Doc. 4 at 3.) Federal courts may not grant a writ of habeas corpus brought by an individual in custody pursuant to a state court judgment unless "the applicant has exhausted the remedies available in the courts of the State." 28 U.S.C. § 2254(b)(1)(A). Mr. Lajeunesse's criminal case and revocation have been resolved, but he has not presented any of the claims he advances in the petition to the state courts. (Doc. 4 at 4.) Accordingly, there are still remedies available to Mr. Lajeunesse under state law, including extraordinary, direct, and collateral review. *Id.*

Consequently, Judge Johnston recommends that the Court dismiss this matter without prejudice. Mr. Lajeunesse may return to this Court after he fully

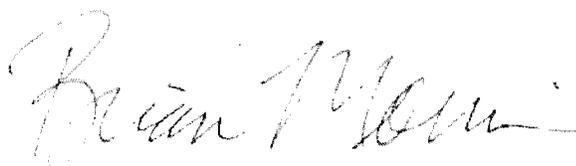
exhausts the claims relative to his current custody in the state courts. *Id.* at 5. Judge Johnston, further, recommends that a certificate of appealability be denied because there is no reason to encourage further proceedings in this Court. *Id.* The Court has reviewed Judge Johnston's Findings and 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. 4), are ADOPTED IN FULL.

IT IS ORDERED that this matter be dismissed without prejudice as unexhausted. The Clerk of Court shall enter, by separate document, a judgment in favor of Respondent and against Petitioner.

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

DATED this 19th day of October, 2017.

A handwritten signature in cursive script, appearing to read "Brian Morris".

Brian Morris
United States District Court Judge