

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

LANNY WADE BUEHL,

Petitioner,

vs.

TIM FOX, ATTORNEY GENERAL
OF THE STATE OF MONTANA;
R JONES,

Respondents.

CV-18-70-H-BMM

ORDER

Petitioner Lanny Buehl (Buehl) has filed a Petition seeking a writ of habeas corpus under 28 U.S.C. § 2254. (Doc. 1). Buehl is a state prisoner proceeding *pro se*.

Buehl was arrested on February 1, 2018, for violating the terms of his parole on a sentence imposed by Montana's Ninth Judicial District Court, Glacier, County. A preliminary hearing was conducted on February 7, 2018. Buehl's parole was revoked by the Montana Board of Pardons in March of 2018. Buehl alleges that the preliminary hearing was conducted in a manner that violated his right to due process. (Doc. 1 at 4). Buehl requests that this Court reinstate his parole. (Doc. 1 at 7). Buehl acknowledges that he has not presented his due process claim to the Montana Supreme Court. (Doc. 1 at 4).

United States Magistrate Judge John Johnston issued Findings and Recommendations in this matter on June 29, 2018. (Doc. 4). Judge Johnston recommended that Buehl's Petition be dismissed because Buehl had not yet exhausted his state court remedies. (Doc. 4 at 3-5). Buehl did not file objections to Judge Johnston's Findings and Recommendations.

The Court has reviewed Judge Johnston's Findings and Recommendations for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). The Court finds no error in Judge Johnston's Findings and Recommendations, and adopts them in full. A review of Buehl's Petition reveals that he has not sought appellate relief in state court. This Court cannot review Buehl's Petition until he has exhausted his state court remedies. *See Rose v. Lundy*, 455 U.S. 509, 518-522 (1982).

Accordingly, IT IS ORDERED:

1. Buehl's Petition (Doc. 1) is DISMISSED without prejudice for failure to exhaust state court remedies.
2. A certificate of appealability is DENIED. Buehl has not made a substantial showing that he was deprived of a constitutional right. Reasonable jurists would agree that Buehl has failed to exhaust his state court remedies.

3. The Clerk is directed to enter judgment accordingly.

DATED this 15th day of August, 2018.

A handwritten signature in blue ink that reads "Brian Morris". The signature is written in a cursive style with a horizontal line extending from the end of the name.

Brian Morris
United States District Court Judge