

FILED

APR 29 2011

PATRICK E. DUFFY, CLERK

By DEPUTY CLERK, MISSOULA

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

TIMOTHY T. NESDALE,)	CV 11-33-M-DWM-JCL
)	
Petitioner,)	
)	
vs.)	ORDER
)	
MIKE MAHONEY,)	
)	
Respondent.)	
_____)	

Petitioner Nesdale filed a letter on February 7, 2011, and after the Court's direction, filed an Amended Petition on March 11, 2011. Nesdale alleged that the State breached the plea agreement and the trial court altered his sentence after it had been pronounced. Magistrate Judge Jeremiah C. Lynch entered his Findings and Recommendation on March 21, 2011. Judge Lynch found there are state remedies that remain available to Nesdale, if he acts promptly. Further, Judge

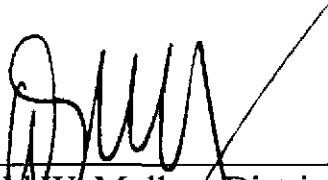
Lynch found that because Nesdale has not even attempted to present his claims in state court, there is no good cause to stay this case while he litigates his claims there.

Petitioner Nesdale did not timely object and so has waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court reviews the Findings and Recommendation for clear error. McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). 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). I can find no clear error with Judge Lynch’s recommendation (dkt #6) and therefore adopt it in full.

Accordingly, IT IS HEREBY ORDERED that the Amended Petition (dkt #4) is DISMISSED WITHOUT PREJUDICE. The Clerk of Court is directed to enter by separate document a judgment of dismissal.

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

Dated this 27 day of April, 2011.



Donald W. Molloy, District Judge
United States District Court