

FILED

APR 01 2011

PATRICK E. DUFFY, CLERK

By _____
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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

MISSOULA DIVISION

SHAWN RYAN COWAN,)	CV 11-37-M-DWM-JCL
)	
Petitioner,)	
)	
vs.)	ORDER
)	
ATTORNEY GENERAL STEVE)	
BULLOCK,)	
)	
Respondent.)	
_____)	

Petitioner Shawn Ryan Cowan, a state prisoner proceeding pro se, filed this action for a writ of habeas corpus under 28 U.S.C. § 2254. On March 2, 2011, United States Magistrate Judge Jeremiah Lynch issued Findings and Recommendations and recommended that this action be dismissed without prejudice for failure to exhaust state remedies.

The Petitioner 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 Findings and Recommendation. Accordingly, IT IS HEREBY ORDERED that Judge Lynch’s Findings and Recommendation (dkt #3) is adopted in full and the Petition (dkt #1) is DISMISSED WITHOUT PREJUDICE for failure to exhaust state remedies.

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 1st day of April, 2011.



Donald W. Molloy, District Judge
United States District Court