

FILED

MAY 13 2011

PATRICK E. DUFFY, CLERK

By DEPUTY CLERK, MISSOULA

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

MISSOULA DIVISION

DONNY RAY GEORGE,)	CV 11-59-M-DWM-JCL
)	
)	
Petitioner,)	
v.)	ORDER
)	
MONTANA DEPARTMENT OF)	
CORRECTIONS, et al.,)	
)	
Respondents.)	
_____)	

Petitioner George, a state prisoner proceeding pro se, brought this action pursuant to 28 U.S.C. § 2254. Petitioner alleges Defendants violated his due process rights, lack jurisdiction over him, and revoked his suspended sentence based on racial discrimination. Magistrate Judge Lynch entered Findings and Recommendation in this matter on May 9, 2011. After assessing the merits to all three claims, Judge Lynch found the petition frivolous, and recommended it be

denied as such.

Petitioner timely objected to the Findings and Recommendation on May 12, 2011. He is therefore entitled to de novo review of the specified findings or recommendations to which he objects. 28 U.S.C. § 636(b)(1). The portions of the Findings and Recommendation not specifically objected to will be reviewed for clear error. McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Despite Petitioner's objections, I agree with Judge Lynch's analysis and conclusions. Because the parties are familiar with the factual and procedural background, it will not be restated here.

Petitioner only objects to Judge Lynch's findings on his due process claim. He claims his two sentences are to run consecutively, yet he never entered a supervision agreement on his first sentence, only the second. Judge Lynch found the judgment imposed clearly stated that the sentences for both cases run consecutively for a total of twenty years imprisonment with twelve years suspended, and Petitioner has received nothing to the contrary. In his objection, Petitioner refines his claim. He now argues that the Department of Corrections violated Mont. Code Ann. § 46-23-1011 by not having him complete his supervised release on the first sentence before having him begin his second sentence. The statute, which requires the Department to supervise probationers,

does not require consecutive terms of supervised release be formally separated.

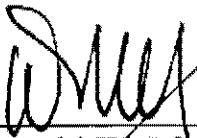
As such, I agree with Judge Lynch that this claim fails on the merits.

I find no clear error in Judge Lynch's remaining findings and recommendations, and adopt them (dkt #4) in full.

Accordingly, IT IS HEREBY ORDERED that Petitioner George's Petition (dkt #1) is DENIED on the merits. The Clerk of Court shall enter judgment in favor of Respondents and against Petitioner.

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

Dated this 13th day of May, 2011.



Donald W. Molloy, District Judge
United States District Court