

**FILED**

**FEB 25 2013**

Clerk, U.S. District Court  
District Of Montana  
Missoula

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

SHANE McCLANAHAN, )  
)  
Petitioner, )  
v. )  
)  
WARDEN LEROY KIRKEGARD )  
and ATTORNEY GENERAL OF )  
THE STATE OF MONTANA, )  
)  
Respondents )  
\_\_\_\_\_ )

CV 11-92-M-DWM-JCL  
CV 11-117-M-DWM-JCL

ORDER

Shane McClanahan is a state prisoner proceeding pro se. He petitions for a writ of habeas corpus under 28 U.S.C. § 2254, seeking relief from two judgments—a 2002 conviction for two counts of attempted deliberate homicide and a 2006 conviction for sexual intercourse without consent. Judge Lynch recommends denying the petition. The Court agrees and denies McClanahan’s petition.

The parties are entitled to a de novo review of the specified findings or recommendations to which they timely objected. 28 U.S.C. § 636(b)(1). But the portions of Judge Lynch’s Findings and Recommendations not specifically objected to are reviewed for clear error. *McDonnell Douglas Corp. v. Commodore*

*Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981).

McClanahan did not file any objections to Judge Lynch's Findings and Recommendation, and it is not clearly erroneous. The parties are familiar with the facts and procedural background of the case, so they are not restated here.

McClanahan's fourth amendment claim fails because the arrest took place outside of his home when there was probable cause to believe that he had committed a felony offense. *See Hart v. Parks*, 450 F.3d 1059, 1065 (9th Cir. 2006). Moreover, McClanahan has failed to show that he did not have a full and fair opportunity to litigate this claim in state court. *See Moorman v. Schriro*, 426 F.3d 1044, 1053 (9th Cir. 2005).

McClanahan's fifth amendment claim fails because the evidence shows that the officers did not exploit McClanahan's injuries when taking his statement or coerce him to make a statement.

Finally, McClanahan's ineffective assistance of counsel claim fails he has not shown that his counsel's conduct was unreasonable or that he was prejudiced by his counsel's performance. *See Strickland v. Wash.*, 466 U.S. 668, 687 (1984).

The Court adopts Judge Lynch's Findings and Recommendations in its entirety and denies McClanahan's petition. The Court also denies a certificate of appealability.

IT IS ORDERED that Shane McClanahan's first, third, and fifth claims are

DENIED.

IT IS FURTHER ORDERED that, since all claims in both cases have been denied on the merits, the respondents' motion to dismiss (9:11-cv-92, doc. 49; 9:11-cv-117, doc. 38) is DISMISSED AS MOOT.

IT IS FURTHER ORDERED that the Clerk of Court is directed to enter judgment in favor of the respondents and against McClanahan in causes CV 11-92-M-DWM-JCL and CV 11-117-M-DWM-JCL.

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

Dated this 25<sup>th</sup> day of February 2013.



Donald W. Molloy, District Judge  
United States District Court