

FILED

JAN 28 2013

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

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

DAVID MICHAEL ESLICK,)	CV 12-107-M-DLC
)	
Petitioner,)	
)	
vs.)	ORDER
)	
LEROY KIRKEGARD;)	
ATTORNEY GENERAL OF)	
THE STATE OF MONTANA)	
)	
Respondents.)	
_____)	

United States Magistrate Judge Jeremiah C. Lynch entered Findings and Recommendations in this matter on December 6, 2012, recommending that David Michael Eslick's Petition be denied on the merits. Subsequently, mail sent to Eslick was returned as undeliverable, and Eslick has not filed objections. Judge Lynch's Findings and Recommendations are thus reviewed for clear error. 28 U.S.C. § 636(b)(1).

There is no clear error in Judge Lynch's findings and recommendations.

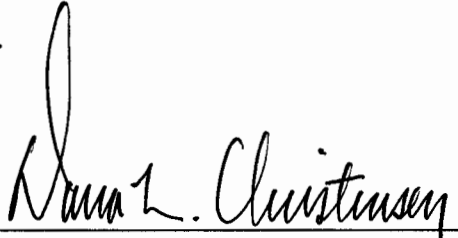
First, Eslick has not stated facts showing a right to relief based on his claim that his appellate counsel violated his right to effective assistance by counsel or that the Montana Supreme Court violated his right to due process. Both followed the requirements of *Anders v. California*, 386 U.S. 738 (1967), codified at Mont. Code Ann. § 46-8-103(2). Second, sufficient evidence was presented at the revocation hearing to support the findings of the trial court and its determination that Eslick's testimony was not credible. Finally, the disposition and sentence handed down by the trial court was lawful and is supported by the record. Eslick has not alleged any constitutional violation.

Accordingly, IT IS ORDERED that the Petition is DENIED on the merits.

The Clerk of Court is directed to enter by separate document a judgment in favor of Respondents and against Petitioner.

A certificate of appealability is DENIED. Eslick's claims do not support an inference that he was deprived of any constitutional right, and his petition lacks substance.

Dated this 28th day of January 2013.



Dana L. Christensen, District Judge
United States District Court