

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

RODNEY A. EDMUNDSON,

Plaintiff,

vs.

LEROY KIRKEGARD; ATTORNEY
GENERAL OF THE STATE OF
MONTANA,

Defendants.

CV 14-172-M-DLC

ORDER

FILED

JUN 17 2014

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

This case is before the Court on Petitioner Rodney A. Edmundson's application for write of habeas corpus under 28 U.S.C. § 2254. Edmundson is a state prisoner proceeding pro se.

On May 29, 2014, United States Magistrate Judge Jeremiah C. Lynch issued his Findings and Recommendation, in which he recommended the Court dismiss the petition. (Doc. 4.) Edmundson did not timely object to the Findings and Recommendation, and so has waived his right to de novo review. 28 U.S.C. § 636(b)(1). The Court will review 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).

Edmundson opposes the revocation of his five-year suspended sentence, arguing that because he served two years and nine months under supervision, resentencing for a custodial term of five-years violated his rights under the Fifth and Fourteenth Amendments. Judge Lynch found that upon revocation, neither federal nor state law precludes imposition of the remaining portion of the suspended term originally imposed, citing *United States v. Crowder*, 738 F.3d 1103, 1104-05 (9th Cir. 2013) (affirming re-imposition of life term of supervised release following finding that defendant violated conditions of original life term of supervised release). As a result, Judge Lynch concluded that Edmundson’s petition makes no showing that he was deprived of a constitutional right and should be dismissed.

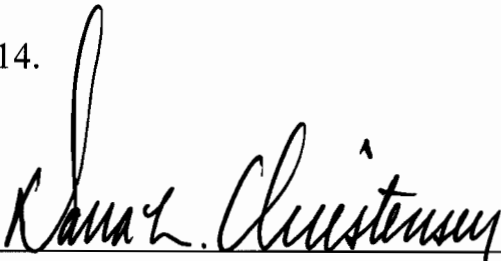
Upon review of the Petition, the Findings and Recommendation, and applicable law, the Court concurs with Judge Lynch’s findings and conclusions and finds no clear error therein. Accordingly,

IT IS ORDERED that:

- (1) Judge Lynch’s Findings and Recommendation is ADOPTED.
- (2) The Petition (Doc. 1) is DENIED on the merits.

- (3) The Clerk of Court is directed to enter a judgment in favor of Respondents and against Petitioner by separate order, and to close this case.
- (4) A certificate of appealability is DENIED.

Dated this 17th day of June, 2014.



Dana L. Christensen, Chief Judge
United States District Court