

FILED

NOV 25 2014

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

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

ROBERT H. GRIFFIN,

Petitioner,

vs.

COMMANDER SMITH, WARDEN;
ATTORNEY GENERAL OF THE
STATE OF MONTANA,

Respondents.

CV 14-256-M-DLC

ORDER

United States Magistrate Judge Jeremiah C. Lynch entered his findings and recommendations on October 23, 2014, recommending that Petitioner Griffin's action pursuant to 28 U.S.C. § 2254 be dismissed without prejudice for failure to exhaust state judicial remedies. Griffin failed to timely object to the findings and recommendations, and so waived the right to *de novo* review of the record. 28 U.S.C. § 636(b)(1). The Court will therefore review the record for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). The Court adopts Judge Lynch's findings and recommendations in full.

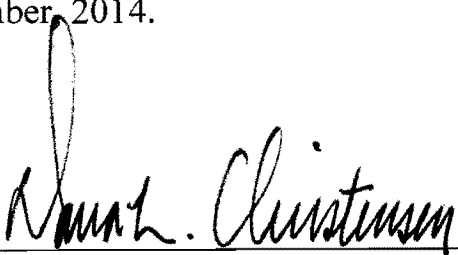
Griffin, who is detained pending trial in state court, filed this habeas petition

challenging both the factual basis of his detention and the course of proceedings in his case thus far. Petitioner must exhaust his state judicial remedies before he brings his habeas action in federal court. *Rose v. Lundy*, 455 U.S. 509, 520 (1981); *Slack v. McDaniel*, 529 U.S. 473, 485-486 (2000). As reasonable jurists would not disagree that Griffin has failed to exhaust his state remedies, a certificate of appealability is inappropriate in this case. *Gonzalez v. Thaler*, 132 S.Ct. 641, 648 (2012).

IT IS ORDERED that Judge Lynch's findings and recommendations (Doc. 4) are ADOPTED IN FULL. Griffin's petition is DISMISSED WITHOUT PREJUDICE. A certificate of appealability is DENIED.

IT IS FURTHER ORDERED that the Clerk of Court enter, by separate document, a judgment of DISMISSAL, and CLOSE this case.

DATED this 25th day of November, 2014.



Dana L. Christensen, Chief Judge
United States District Court