

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

RAYMOND HOLMES,

Petitioner,

vs.

LYNN GUYER; ATTORNEY
GENERAL OF THE STATE OF
MONTANA,

Respondents.

CV 20-03-M-DLC-KLD

ORDER

Petitioner Raymond Holmes, a pro se prisoner proceeding in forma pauperis, filed this action under 28 U.S.C. § 2254 on January 10, 2020. (Doc. 1.) United States Magistrate Judge Kathleen L. DeSoto entered Findings and Recommendations on January 16, 2020. (Doc. 4.) There, Judge DeSoto recommended that the Court deny Holmes' petition on the merits; she also recommended that it deny a certificate of appealability. (*Id.* at 6.)

Because he failed to timely object, Holmes has waived his right to de novo review of the record. 28 U.S.C. § 636(b)(1)(C). Accordingly, the Court reviews the Magistrate Judge's findings and recommendations for clear error. *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc); *Thomas v.*

Arn, 474 U.S. 140, 149 (1985). Clear error is “significantly deferential” and 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) (citations omitted).

Reviewing the Findings and Recommendations for clear error, the Court finds none. As Judge DeSoto noted, “the power of a court to try a person for crime is not impaired by the fact that he had been brought within the court’s jurisdiction by reason of ‘forcible abduction.’” *Frisbie v. Collins*, 342 U.S. 519, 522 (citing *Ker v. Illinois*, 119 U.S. 436, 444 (1886)). Therefore, Holmes’ claim—that the Montana court that convicted him lacked subject matter jurisdiction because he was allegedly kidnapped from Washington (Doc. 1 at 4)—fails. Furthermore, the Court agrees with Judge DeSoto that Holmes has not made a substantial showing that he was deprived of a federal constitutional right and that there is no basis to encourage further proceedings. *See* 28 U.S.C. § 2253 (c)(2); *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

Accordingly, reviewing Judge DeSoto’s Findings and Recommendations for clear error and finding none, IT IS ORDERED that:

(1) The Court ADOPTS IN FULL Judge DeSoto’s Findings and Recommendations (Doc. 4), and Holmes’ Petition (Doc. 1) is DENIED on the

merits;

(2) The Clerk shall enter, by separate document, a judgment in favor of Respondents and against Petitioner Holmes;

(3) A certificate of appealability is DENIED.

DATED this 25th day of March, 2020.



Dana L. Christensen, District Judge
United States District Court