

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PENDLETON DIVISION

ROBERT ADAM NEUMAN,

Petitioner,

v.

MARK NOOTH,

Respondent.

No. 2:14-cv-00828-SB

OPINION AND ORDER

MOSMAN, J.,

On June 22, 2016, Magistrate Judge Beckerman issued her Findings and Recommendation [43], recommending Petitioner's Amended Petition for Writ of Habeas Corpus [42] be DENIED. Petitioner objected [44] and Respondent responded [45].

DISCUSSION

The magistrate judge makes only recommendations to the court, to which any party may file written objections. The court is not bound by the recommendations of the magistrate judge, but retains responsibility for making the final determination. The court is generally required to make a de novo determination regarding those portions of the report or specified findings or recommendation as to which an objection is made. 28 U.S.C. § 636(b)(1)(C). However, the court is not required to review, de novo or under any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the F&R to which no objections are addressed. See

Thomas v. Arn, 474 U.S. 140, 149 (1985); United States v. Reyna-Tapia, 328 F.3d 1114, 1121 (9th Cir. 2003). While the level of scrutiny under which I am required to review the F&R depends on whether or not objections have been filed, in either case, I am free to accept, reject, or modify any part of the F&R. 28 U.S.C. § 636(b)(1)(C).

Upon review, I agree with Judge Beckerman's recommendation, and I ADOPT the F&R [42] as my own opinion. However, I will GRANT a certificate of appealability to Mr. Neuman because I believe this case may present an issue of federal law. As I explained in more detail at oral argument, unlike the cases cited by the parties, the comparison between convictions that occurred for Mr. Neuman's sentencing was a comparison between a state conviction and a conviction obtained under a federal statute. Such a comparison necessarily involves an interpretation of federal law to determine the scope of the federal statute. As such, I find a certificate of appealability is appropriate in this case.

IT IS SO ORDERED.

DATED this 24th day of August, 2016.

/s/ Michael W. Mosman
MICHAEL W. MOSMAN
Chief United States District Judge