

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

RIAN T. SMITH,

Petitioner,

Case No. 2:18-cv-02068-JR

v.

OPINION AND ORDER

RICHARD MCGRAW, Acting
Superintendent, Eastern Oregon Correctional
Institution,

Respondent.

MOSMAN, J.,

On March 30, 2022, Magistrate Judge Jolie Russo issued her Findings and Recommendation (“F. & R.”) [ECF 65]. Judge Russo recommends that I deny the Petition for Writ of Habeas Corpus [ECF 1] and dismiss this case with prejudice. Additionally, she recommends that the Court decline to issue a Certificate of Appealability pursuant to 28 U.S.C. § 2253(c)(2). Petitioner timely filed objections on April 13, 2022. Respondent filed a response on April 27, 2022. I agree with Judge Russo.

STANDARD OF REVIEW

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).

CONCLUSION

Upon review, I agree with Judge Russo's recommendation, and I ADOPT her F. & R. [ECF 65] as my own opinion. I DENY the Petition for Writ of Habeas Corpus [ECF 1] and dismiss this case with prejudice. Additionally, I decline to issue a Certificate of Appealability on the basis that Petitioner has not made a substantial showing of the denial of a constitutional right pursuant to 28 U.S.C. § 2253(c)(2).

IT IS SO ORDERED.

DATED this 20th day of April, 2022.


MICHAEL W. MOSMAN
Senior United States District Judge