

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

SHIRLEY ANN HINTON,

07-CV-1148-JE

Petitioner,

ORDER

v.

LORI HUMBERT,

Respondent.

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1- ORDER

BROWN, Judge.

Magistrate Judge John Jelderks issued Findings and Recommendation (#40) on December 11, 2008, in which he recommends the Court deny the Petition (#1) for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. Petitioner filed timely Objections to the Findings and Recommendation. The matter is now before this Court pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b).

When any party objects to any portion of the Magistrate Judge's Findings and Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate Judge's report. 28 U.S.C. § 636(b)(1). *See also United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003)(*en banc*); *United States v. Bernhardt*, 840 F.2d 1441, 1444 (9th Cir. 1988).

In her Objections, Petitioner Shirley Ann Hinton reiterates the arguments in her Petition alleging (1) her right to due process was violated when she was sentenced to a greater term than the term set out in her Plea Petition, (2) she received ineffective assistance of counsel when counsel failed to properly advise her of the potential sentence, and (3) her underlying convictions should have been vacated in addition to her original sentence. The Magistrate Judge addressed Petitioner's contentions in his Findings and Recommendation and found Petitioner cannot prevail on her due-process claim because her

sentence has been corrected so that it does not exceed the maximum sentence Petitioner was advised of at the time she entered her plea. The Magistrate Judge also found Petitioner cannot prevail on her claim for ineffective assistance of counsel because (1) counsel advised Petitioner she might receive a sentence of 226 months and that was the sentence she received after the state court corrected her sentence; (2) Petitioner has not identified the witnesses who she believes counsel should have called, what the witnesses would have testified to, or the relevant depositions or letters that she believes counsel should have refuted; and (3) there is not any clearly established federal law that allows a petitioner to prevail on a claim for ineffective assistance of counsel arising out of a noncapital sentencing proceeding. The Magistrate Judge also found Petitioner cannot prevail on her claim that her underlying convictions should have been vacated because this issue was presented to the Oregon state courts as a question of statutory interpretation, and a question of state-law interpretation is not a proper basis for federal habeas corpus relief.

In summary, this Court has carefully considered Petitioner's Objections and concludes they do not provide a basis to modify the Magistrate Judge's Findings and Recommendation. The Court also has reviewed the pertinent portions of the record *de novo* and does not find any error in the Magistrate Judge's Findings

and Recommendation.

CONCLUSION

The Court **ADOPTS** Magistrate Judge Jelderks's Findings and Recommendation (#40) and, accordingly, **DENIES** the Petition (#1) for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254.

IT IS SO ORDERED.

DATED this 16th day of March, 2009.

/s/ Anna J. Brown

ANNA J. BROWN
United States District Judge