

FILED
MAR 07 2011

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

JAMES WALTER WERBY,

Civil Case No. 08-1381-PK

Petitioner,

ORDER

vs.

BRIAN BELLEQUE,

Respondent.

Nell Brown
Assistant Federal Public Defender
101 SW Main Street, Suite 1700
Portland, Oregon 97204

Attorney for Petitioner

John R. Kroger
Attorney General
Jonathan W. Diehl
Assistant Attorney General
Oregon Department of Justice
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Attorneys for Respondent

KING, Judge:

The Honorable Paul Papak, United States Magistrate Judge, filed Findings and Recommendation on December 14, 2010. The matter is now before me pursuant to 28 U.S.C. § 636(b)(1)(B) and Rule 72(b) of the Federal Rules of Civil Procedure. Decisions on dispositive issues under 28 U.S.C. § 636(b)(1)(B) are reviewed de novo. United States v. Raddatz, 447 U.S. 667, 673 (1980); Bhan v. NME Hospitals, Inc., 929 F.2d 1404, 1414 (9th Cir. 1991). When a party objects to any portion of the Magistrate's Findings and Recommendation, the district court must make a de novo determination of that portion of the Magistrate's report. 28 U.S.C. § 636(b)(1)(C); United States v. Remsing, 874 F.2d 614 (9th Cir. 1989).

Petitioner objects to the Magistrate Judge's recommendation that his Petition for Writ of Habeas Corpus be dismissed with prejudice and that the court not issue a Certificate of Appealability.

I have considered defendants' objections and given the Findings and Recommendation de novo review. I ADOPT the Magistrate Judge's Findings and Recommendations (doc. # 54), except for the recommendation that a Certificate of Appealability not be issued. The Petition for

Writ of Habeas Corpus (doc. # 2) is DENIED and this case is dismissed with prejudice. A Certificate of Appealability shall issue.

IT IS SO ORDERED.

Dated this 7th day of March, 2011.



Garr M. King
United States District Judge