

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

**ROBERT LINN MCCULLEN,**

Plaintiff,

v.

**RICHARD IVES,** Warden,

Defendant.

No. 3:17-cv-1260-JE

OPINION AND ORDER

**MOSMAN, J.,**

On February 26, 2018, Magistrate Judge John Jelderks issued his Findings and Recommendation (F&R) [18], recommending that the Petition for Writ of Habeas Corpus [1] should be denied and a judgment should be entered dismissing this case with prejudice, but that the Court should allow a Certificate of Appealability as to all argued issues in this case. Petitioner objected. [20]. I held oral argument on May 7, 2018.

**DISCUSSION**

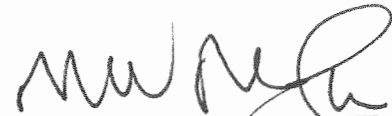
The magistrate judge makes only recommendations to the court, to which any party may file written objections. The court is not bound by the recommendations of the magistrate judge, but retains responsibility for making the final determination. The court is generally required to make a de novo determination 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).

For reasons stated on the record at oral argument, I decline to adopt Judge Jelderks's F&R. I further GRANT the Petition for Writ of Habeas Corpus [1]. The judgment in petitioner's criminal proceeding, 6:10-cr-60136-AA, is VACATED. Resentencing shall be scheduled.

IT IS SO ORDERED.

DATED this 10 day of May, 2018.



MICHAEL W. MOSMAN  
Chief United States District Judge