

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

DENNIS R. SUND,	)	Civ. 14-4052-KES
	)	
Petitioner,	)	
	)	
vs.	)	ORDER ADOPTING
	)	REPORT AND
DARIN YOUNG, Warden, South Dakota State Penitentiary, and MARTY J. JACKLEY, Attorney General, State of South Dakota,	)	RECOMMENDATION
	)	
Respondents.	)	

Petitioner, Dennis Ray Sund, filed a pro se petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The court referred Sund's petition to Magistrate Judge John Simko pursuant to 28 U.S.C. § 636(b) and Rule 8 of the Rules Governing Section 2254 Cases in United States District Courts.

On May 1, 2014, Magistrate Judge John Simko submitted his report and recommended that Sund's petition be dismissed because the face of petitioner's application indicated he had not pursued a state habeas action and therefore, his available state habeas remedies were not exhausted pursuant to the requirements of 28 U.S.C. §2254(b)(1)(A). Objections to the report and recommendation were due by May 19, 2014.

The time for objections has passed. No objections to the Report and Recommendation have been filed pursuant to 28 U.S.C. § 2254, Rule 8(b)(3).

The court has considered the case de novo and accepts the Report and Recommendation in full. Therefore, it is

ORDERED that Magistrate Judge Simko's report and recommendation (Docket 8) is adopted in full. Petitioner's pro se petition for habeas corpus is denied without prejudice.

IT IS FURTHER ORDERED that petitioner's motion to appoint counsel (Docket 4) is denied as moot.

IT IS FURTHER ORDERED that based upon the reasons set forth herein and pursuant to Fed. R. App. P. 22(b), the court finds that petitioner has not made a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). Therefore, a certificate of appealability is denied.

Dated June 3, 2014.

BY THE COURT:

*/s/ Karen E. Schreier*

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KAREN E. SCHREIER  
UNITED STATES DISTRICT JUDGE