

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

ROBBIE D. KRABBENHOFT,
Petitioner,

vs.

ROBERT DOOLEY, WARDEN – SDSP;
AND THE ATTORNEY GENERAL OF
THE STATE OF SOUTH DAKOTA,
Respondent.

4:16-CV-04149-KES

ORDER ADOPTING REPORT AND
RECOMMENDATION AND
DISMISSING CASE

Petitioner, Robbie D. Krabbenhoft, filed a pro se petition for writ of habeas corpus under 28 U.S.C. § 2254. The matter was referred to Magistrate Judge Veronica L. Duffy for a report and recommendation and she recommended dismissing the petition. Petitioner then sent a letter to Magistrate Judge Duffy (Docket 16) that the court construes to be an objection to the report and recommendation. For the following reasons, the court adopts Magistrate Judge Duffy's report as supplemented herein.

STANDARD OF REVIEW

The court's review of a magistrate judge's report and recommendation is governed by 28 U.S.C. § 636 and Rule 72 of the Federal Rules of Civil Procedure. Under 28 U.S.C. § 636(b)(1), the court reviews de novo any objections to the magistrate judge's recommendations with respect to dispositive matters that are timely made and specific. *See* Fed. R. Civ. P. 72(b). ("The district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to"). In conducting its de novo

review, this court may then “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1); *see also United States v. Craft*, 30 F.3d 1044, 1045 (8th Cir. 1994). This court has conducted a de novo review of all of Magistrate Judge Duffy’s report and recommendation.

DISCUSSION

Krabbenhof’s letter to Magistrate Judge Duffy does not object to the contents of the report and recommendation, but instead raises a new complaint that his attorney, Gina Rogers, did not give him copies of his arrest warrants, police reports, or the results of the rape kit. (Docket 16). Krabbenhof argues that he believes he is entitled to copies of these documents because his attorney on a previous case—his DUI conviction--told him he was entitled to receive these documents. *Id.*

Krabbenhof did raise this issue during his state habeas proceedings. After a full hearing, Judge Sommers found that there was conflicting testimony regarding whether Rogers provided Krabbenhof with copies of the documents, but even if copies of the documents were not provided, the issue had no merit. Docket 10-6. Specifically, the court stated: “This Court is unaware of any requirement that a defendant be provided a copy of a police report, and further, that distribution of a police report to a client would normally run afoul of discovery agreements required by the State.” *See id.* at 4. Krabbenhof cites no federal statute or case law that supports his position and this court is not aware of any such requirement under federal law.

After reviewing the state court transcripts and the written decision of the state habeas court, this court finds the South Dakota state court made factual findings that were fairly supported in the record and it did not unreasonably apply federal law. As a result, this claim for relief is denied. Additionally, the court has reviewed all of petitioner's other claims and adopts in full Magistrate Judge Duffy's report and recommendation.

CONCLUSION

After a review of Magistrate Judge Duffy's report and recommendation and Krabbenhoft's objection, the court finds no error in the report.

Thus, it is ORDERED

1. The report and recommendation (Docket 15) is adopted in full as supplemented herein.
2. Petitioner's pro se petition for habeas corpus (Docket 1) is denied.
3. Defendants' motion to dismiss (Docket 13) is granted.
4. Based upon the reasons stated and under 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). Thus, a certificate of appealability is denied.

Dated August 15, 2017.

BY THE COURT:

/s/ Karen E. Schreier
KAREN E. SCHREIER
UNITED STATES DISTRICT JUDGE