

1  
2  
3  
4  
5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
7 AT TACOMA

8 DARNELL O. MCGARY,

9 Petitioner,

10 v.

11 MARK STRONG,

12 Respondent.

CASE NO. C14-5829 BHS

ORDER ADOPTING REPORT  
AND RECOMMENDATION

13 This matter comes before the Court on the Report and Recommendation (“R&R”)  
14 of the Honorable Karen L. Strombom, United States Magistrate Judge (Dkt. 30), and  
15 Petitioner Darnell McGary’s (“McGary”) objections to the R&R (Dkts. 31, 32).

16 On October 21, 2014, McGary filed a petition seeking habeas corpus relief from  
17 his 2013 order of civil commitment. Dkt. 2. McGary raises two grounds for relief: (1)  
18 the State is precluded from arguing other diagnoses for his civil commitment; and (2) his  
19 civil commitment violates the Double Jeopardy and Ex Post Facto Clauses. *Id.*

20 On January 9, 2015, Judge Strombom issued the R&R recommending that the  
21 Court deny McGary’s petition and deny a certificate of appealability. Dkt. 30. On  
22 January 16 and 22, 2015, McGary filed objections. Dkt. 31, 32. On January 23, 2015,

1 Respondent Mark Strong responded. Dkt. 33. On January 30, 2015, McGary replied.  
2 Dkt. 34.

3 Federal Rule of Civil Procedure 72(b) governs objections to a magistrate judge's  
4 recommended disposition. Rule 72(b) provides as follows:

5 The district judge must determine de novo any part of the magistrate  
6 judge's disposition that has been properly objected to. The district judge  
7 may accept, reject, or modify the recommended disposition; receive further  
8 evidence; or return the matter to the magistrate judge with instructions.

9 Fed. R. Civ. P. 72(b)(3).

10 McGary objects to the R&R, arguing that Judge Strombom unreasonably applied  
11 United States Supreme Court precedent. Dkt. 32. The Court disagrees. Judge Strombom  
12 thoroughly analyzed the cases cited by McGary, as well as other applicable precedent, in  
13 the R&R. *See* Dkt. 30 at 6–10. In light of this precedent, Judge Strombom properly  
14 concluded that McGary's claims are not based upon clearly established federal law and  
15 thus habeas relief is barred under 28 U.S.C. § 2254(d). *See id.* The Court further agrees  
16 with Judge Strombom that a certificate of appealability should not be issued to McGary.

17 McGary also objects to Judge Strombom's determination that an evidentiary  
18 hearing is not required. Dkt. 32. As Judge Strombom explained, a petitioner must satisfy  
19 the requirements of 28 U.S.C. § 2254(e)(2) to obtain an evidentiary hearing. *See* Dkt. 30  
20 at 4–5. McGary does not provide any argument that he satisfies those requirements.

21 Finally, McGary objects to Judge Strombom's denial of his motion to appoint counsel.  
22 Dkt. 32. McGary, however, has not established that Judge Strombom's decision is  
clearly erroneous or contrary to law. *See* Fed. R. Civ. P. 72(a).

1           Therefore, the Court having considered the R&R, McGary's objections, and the  
2 remaining record, does hereby find and order as follows:

- 3           (1)    The R&R is **ADOPTED**;
- 4           (2)    The petition is **DISMISSED**;
- 5           (3)    The certificate of appealability is **DENIED**; and
- 6           (4)    The Clerk shall close this case.

7           Dated this 4th day of March, 2015.

8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22



---

BENJAMIN H. SETTLE  
United States District Judge