

FILED

OCT 22 2010

PATRICK E. DUFFY, CLERK

By _____
DEPUTY CLERK, MISSOULA

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

ROBERT SCOTT STEARNS,)	CV 10-44-M-DWM-JCL
)	
Petitioner,)	
)	
vs.)	ORDER
)	
ATTORNEY GENERAL)	
OF THE STATE OF MONTANA,)	
)	
Respondent.)	
_____)	

Petitioner Robert Scott Stearns filed a petition for writ of habeas corpus on May 5, 2010. At the time of filing, the claims in his federal petition were not fully exhausted in the Montana Supreme Court. Stearns never appealed to the Montana Supreme Court. Therefore, the claims in his federal petition are procedurally defaulted. An order was entered on August 3, 2010 requesting the Petitioner show

cause, by August 20, 2010, why his petition should not be dismissed with prejudice for failure to present his claims to the Montana Supreme Court. Petitioner failed to respond and United States Magistrate Judge Jeremiah C. Lynch entered Findings and Recommendation on September 15, 2010 and recommended dismissing Stearns' petition with prejudice as procedurally defaulted without excuse. Petitioner did not timely object to the Findings and Recommendation and has therefore waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court will review the Findings and Recommendation for clear error. McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." United States v. Syrax, 235 F.3d 422, 427 (9th Cir. 2000).

After a review of Judge Lynch's Findings and Recommendation, I find no clear error. Accordingly,

IT IS HEREBY ORDERED that Judge Lynch's Findings and Recommendation (dkt #4) are adopted in full. Stearns' Petition (dkt #1) is DISMISSED WITH PREJUDICE as procedurally defaulted without excuse.

IT IS FURTHER ORDERED that a certificate of appealability is DENIED.

The Clerk of Court is directed to close this matter and enter judgment by

separate document in favor of Respondent and against Petitioner.

Dated this 24th day of October, 2010.



Donald W. Molloy, District Judge
United States District Court

