

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

FILED
OCT 31 2016
Clerk, U.S. District Court
District Of Montana
Missoula

WAYNE ALLEN HIXON,

Petitioner,

vs.

LEROY KIRKEGARD, ATTORNEY
GENERAL OF THE STATE OF
MONTANA, et. al.,

Respondents.

CV 16-97-M-DLC-JCL

ORDER

United States Magistrate Judge Jeremiah C. Lynch entered his Findings and Recommendations on September 13, 2016, recommending dismissal of Petitioner Wayne Allen Hixon's ("Hixon") application for writ of habeas corpus under 28 U.S.C. § 2254. Hixon timely filed an objection and is therefore entitled to de novo review of those Findings and Recommendations to which he specifically objected. 28 U.S.C. § 636(b)(1)(C). This Court reviews for clear error those findings and recommendations to which no party objects. *See McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 149 (1985). "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).

Notwithstanding the above, “[w]here a petitioner’s objections constitute perfunctory responses argued in an attempt to engage the district court in a rehashing of the same arguments set forth in the original habeas petition, the applicable portions of the findings and recommendations will be reviewed for clear error.” *Rosling v. Kirkegard*, 2014 WL 693315 at *3 (D. Mont. Feb. 21, 2014) (citations omitted).

Having reviewed Hixon’s objection, the Court finds that he fails to articulate any specific issue with Judge Lynch’s reasoning, and instead attempts to assert a variation of his argument that the state lacked subject matter jurisdiction over him when he was originally prosecuted. Accordingly, the Court reviews Judge Lynch’s Findings and Recommendations for clear error and finds no clear error in the conclusion that Hixon’s petition is time-barred without excuse.

Accordingly, the Court reviews the remainder of Judge Lynch’s Findings and Recommendations for clear error and, finding none,

IT IS ORDERED that:

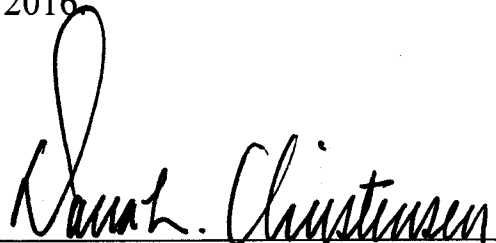
(1) Judge Lynch’s Findings and Recommendations (Doc. 5) are ADOPTED IN FULL.

(2) Petitioner Wayne Allen Hixon’s Petition (Doc. 1) is DISMISSED WITH PREJUDICE as time-barred without excuse.

(3) The Clerk of Court is directed to enter, by separate document, a judgment of dismissal.

(4) A certificate of appealability is DENIED.

Dated this 31st day of October, 2016

A handwritten signature in black ink, reading "Dana L. Christensen". The signature is written in a cursive style with a large, looping initial "D".

Dana L. Christensen, Chief Judge
United States District Court