

FILED

OCT 23 2018

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

Clerk, U.S. District Court
District Of Montana
Missoula

RANDY BRYANT WICK,

Petitioner,

vs.

MICHAEL FLETCHER,

Respondent.

CV 17-146-M-DLC-JCL

ORDER

United States Magistrate Judge Jeremiah C. Lynch entered his Findings and Recommendations on August 28, 2018, recommending that the Court deny Wick's amended petition brought under 28 U.S.C. § 2254 and deny a certificate of appealability. (Doc. 18.) Wick failed to timely object to the Findings and Recommendations, and so waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court reviews for clear error those findings and recommendations to which no party objects. *See Thomas v. Arn*, 474 U.S. 140, 149-53 (1985). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been made." *Wash. Mut., Inc. v. United States*, 856 F.3d 711, 721 (9th Cir. 2017) (citation omitted).

Having reviewed the Findings and Recommendation (Doc. 18), the Court

finds no clear error in Judge Lynch's recommendation that Wick's petition should be denied. First, Wick does not have a constitutional right to postconviction counsel. *Pennsylvania v. Finley*, 481 U.S. 551, 556–57 (1987). Second, under the deferential standard imposed by the Antiterrorism and Effective Death Penalty Act, the state court's determination that Wick voluntarily pled guilty was neither legally nor factually unreasonable. 28 U.S.C. § 2254(d).

Nor is there clear error in Judge Lynch's recommendation that the Court deny a certificate of appealability. Wick has not made "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

Accordingly, IT IS ORDERED:

- (1) Judge Lynch's Findings and Recommendations (Doc. 18) are ADOPTED IN FULL;
- (2) Wick's Amended Petition (Doc. 15) is DENIED on the merits;
- (3) A certificate of appealability is DENIED; and
- (4) The Clerk of Court shall enter by separate document a judgment in favor of Respondent and against Petitioner and close this case.

DATED this 23rd day of October, 2018.



Dana L. Christensen, Chief Judge
United States District Court

FILED

OCT 23 2018

Clerk, U.S. District Court
District Of Montana
Missoula

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

BRAD DAFFIN,

Petitioner,

vs.

JAMES SALMONSEN,

Respondent.

CV 18-126-M-DLC-JCL

ORDER

United States Magistrate Judge Jeremiah C. Lynch entered his Findings and Recommendations on September 7, 2018, recommending that the Court dismiss Daffin's petition brought under 28 U.S.C. § 2254 and deny a certificate of appealability. (Doc. 4.) Daffin failed to timely object to the Findings and Recommendations, and so waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court reviews for clear error those findings and recommendations to which no party objects. *See Thomas v. Arn*, 474 U.S. 140, 149-53 (1985). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been made." *Wash. Mut., Inc. v. United States*, 856 F.3d 711, 721 (9th Cir. 2017) (citation omitted).

Having reviewed the Findings and Recommendation (Doc. 4), the Court

finds no clear error in Judge Lynch's recommendation that Baffin's petition should be denied. Daffin's first state petition for postconviction relief is currently pending, and he therefore has not yet fully exhausted his available state court remedies. 28 U.S.C. § 2254(b)(1)(A).

Nor is there clear error in Judge Lynch's recommendation that the Court deny a certificate of appealability. Daffin has not made "a substantial showing of the denial of a constitutional right," 28 U.S.C. § 2253(c)(2), and reasonable jurists could not debate whether the resolution of this matter on procedural grounds is correct.

Accordingly, IT IS ORDERED:

(1) Judge Lynch's Findings and Recommendations (Doc. 4) are ADOPTED IN FULL;

(2) Daffin's Petition (Doc. 1) is DISMISSED without prejudice;

(3) A certificate of appealability is DENIED; and

(4) The Clerk of Court shall enter judgment of dismissal.

DATED this 23rd day of October, 2018.



Dana L. Christensen, Chief Judge
United States District Court