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

BRANDON THOMAS FADELY,

Petitioner,

vs.

JIM SALMONSEN,

Respondent.

CV 18–138–M–DLC–JCL

ORDER

United States Magistrate Judge Jeremiah C. Lynch entered his Findings and Recommendations on October 30, 2018, recommending that the Court dismiss Petitioner Brandon Thomas Fadely's petition brought under 28 U.S.C. § 2254 and deny a certificate of appealability. (Doc. 13.) Fadely 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. 7), the Court

finds no clear error in Judge Lynch's recommendation that Fadely's petition be dismissed as procedurally defaulted and time-barred. Judge Lynch did not clearly err in determining that Fadely's pro se status and the stress associated with his criminal proceedings do not constitute the "extraordinary circumstances beyond a prisoner's control [that] make it impossible to file a petition on time." *Miles v. Prunty*, 187 F.3d 1104, 1107 (9th Cir. 1999). Nor does the Court find clear error in Judge Lynch's determination that Fadely's petition is procedurally defaulted when Fadely willfully chose not to present his claim to the state court.

Finally, the Court will adopt Judge Lynch's recommendation to deny a certificate of appealability. Fadely has not made "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). "Jurists of reason" could not "debat[e]" whether Fadely's claim was procedurally defaulted. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Accordingly, IT IS ORDERED:

(1) Judge Lynch's Findings and Recommendations (Doc. 7) are ADOPTED IN FULL;

(2) Fadely's Petition (Doc. 1) is DISMISSED;

(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 close this case.

DATED this 19th day of December, 2018.

Dana L. Christensen, Chief Judge
United States District Court