

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

GREGORY LYNN WALLACE,

Petitioner,

vs.

JOSH ZENT, et al.,

Respondent.

CV 20-45-M-DLC

ORDER

Before the Court is the Findings & Recommendation of United States Magistrate Judge Kathleen L. DeSoto. (Doc. 14.) Judge DeSoto recommends that the Court dismiss Petitioner Gregory Lynn Wallace's Amended Petition for writ of habeas corpus on jurisdictional grounds. (*See* Doc. 11.) She further recommends that the Court deny a certificate of appealability. (Doc. 14 at 5.) Wallace does not object.

Absent objection, the Court reviews for clear error. *See United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc); *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Clear error review is "significantly deferential" and 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) (citations omitted).

Reviewing for clear error, the Court finds none. As Judge DeSoto indicates, the Court lacks jurisdiction to hear Wallace's challenges to his 2006 federal convictions. 28 U.S.C. § 2254 (“[A] district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court.”). Additionally, because Wallace's challenges to his state convictions constitute second or successive habeas petitions, the Court lacks jurisdiction over them, too. *Burton v. Stewart*, 549 U.S. 147, 153 (2007). The Court agrees that no jurists of reason could disagree with these conclusions, nor that the issues presented by Wallace's Amended Petition deserve encouragement to proceed further. Thus, the Court will deny a certificate of appealability. *See Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003) (citation omitted).

Accordingly, having conducted clear error review, IT IS ORDERED that the Court ADOPTS Judge DeSoto's Findings and Recommendation (Doc. 14) IN FULL. Consequently, IT IS ORDERED that Wallace's Amended Petition (Doc. 11) is DISMISSED for lack of jurisdiction.

IT IS FURTHER ORDERED that the Clerk of Court shall enter, by separate document, a judgment in favor of Respondent and against Petitioner.

Finally, IT IS ORDERED that a certificate of appealability is DENIED.

DATED this 17th day of December, 2020.



Dana L. Christensen, District Judge
United States District Court