

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

FILED

SEP 30 2013

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

KEITH EUGENE DOYLE,

CV 13-60-BU-DWM-JCL

Petitioner,

vs.

ORDER

MARTIN FRINK, Warden and
ATTORNEY GENERAL OF THE
STATE OF MONTANA,

Respondents.

This action was filed in the United States District Court for the District of Montana, Butte Division on August 5, 2013. Petitioner Keith Eugene Doyle seeks a writ of *habeas corpus* under 28 U.S.C. § 2254. (Doc. 1.) United States Magistrate Judge Jeremiah C. Lynch filed Findings and a Recommendation regarding Mr. Doyle's Motion for Leave to Proceed *in forma pauperis* and Complaint on August 7, 2013. (Doc. 4.) Pursuant to 28 U.S.C. § 636(b)(1), objections to the Findings and Recommendation entered by Judge Lynch were due August 26, 2013. Mr. Doyle submitted his Objections on August 26, 2013. (Doc. 5.) While his Objections were not filed with the Court until August 28, 2013, Mr. Doyle's submission of his documents on the day of the deadline is sufficient. *See Faile v. Upjohn Co.*, 988 F.2d 985, 988 (9th Cir. 1993) (noting that "filing" occurs

when an incarcerated person's document is delivered to prison authorities).

Judge Lynch granted Mr. Ingram's Motion for Leave to Proceed *in forma pauperis* and recommended his Petition be dismissed as an unauthorized successive petition. Mr. Doyle objects to the recommendation that his Petition be dismissed. When a party objects to any portion of the Findings and Recommendation issued by a Magistrate Judge, the district court must make a *de novo* determination regarding that portion of the Magistrate Judge's report. 28 U.S.C. § 636(b)(1)(B); *McDonnell Douglas Corp. v. Commodore Bus. Mach. Inc.*, 656 F.2d 1309, 1313 (9th Cir.1981). None of Mr. Doyle's objections rejoin the jurisdictional analysis Judge Lynch related in findings supporting his recommendation that the Petition be dismissed. Even so, after *de novo* review of Judge Lynch's Findings and Recommendation and Mr. Doyle's Objections to the same, I agree with Judge Lynch's conclusion that Mr. Doyle's Complaint must be dismissed with prejudice. This is Mr. Doyle's third petition challenging the validity of his 2005 conviction. Without authorization to file granted by the Court of Appeals, this Court lacks jurisdiction to entertain a second or successive petition brought under 28 U.S.C. § 2254. *Burton v. Stewart*, 549 U.S. 147, 149 (2007) (per curiam).

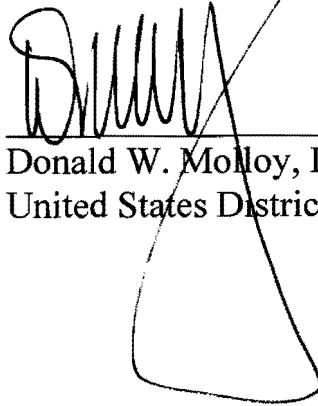
Based on the foregoing, IT IS ORDERED that Judge Lynch's Findings and Recommendation, (doc. 4), are ADOPTED IN FULL. Mr. Doyle's Petition is

DISMISSED as an unauthorized successive petition.

IT IS FURTHER ORDERED a certificate of appealability is DENIED.

IT IS FURTHER ORDERED that the Clerk of Court shall enter by a separate document judgment of dismissal and shall close this case.

DATED this 30th day of September, 2013.



Donald W. Molloy, District Judge
United States District Court