

FILED

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PATRICK E. DUFFY, CLERK

By
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

MARK JAMES TREINER,) CV 07-40-H-DWM-RKS
)
Petitioner,)
)
vs.) ORDER
)
MIKE MAHONEY; ATTORNEY GENERAL OF)
THE STATE OF MONTANA,)
)
Respondents.)
_____)

Petitioner Treiner seeks a writ of habeas corpus under 28 U.S.C. § 2254. United States Magistrate Judge Keith Strong issued an Order on April 8, 2008 instructing Petitioner to show cause why the Petition should not be dismissed for failure to file within the one-year statute of limitations. In his response, Petitioner states that he filed late because he was unaware of an amendment to his state court judgment on June 22, 2004.

Judge Strong issued Findings and Recommendations in which he recommends dismissal of the Petition without prejudice as time-barred. Judge Strong explained that Petitioner's alleged lack of notice of the June 22, 2004 amendment to his state court judgment

does not explain his failure to timely file his Petition because such a lack of notice should have caused Petitioner to believe that the deadline for filing was earlier, not later. Judge Strong concludes that the Petitioner has not shown an extraordinary circumstance that warrants equitable tolling of the limitations period. He also recommends denial of a certificate of appealability.

Petitioner did not timely object and so has waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court will review the Findings and Recommendation for clear error. McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). 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). I can find no clear error with Judge Strong's Findings and Recommendations and therefore adopt them in full.

Accordingly, IT IS HEREBY ORDERED that the Petition is DISMISSED WITH PREJUDICE for failure to file within the one-year statute of limitations, and a certificate of appealability is DENIED.

DATED this 4th day of September, 2008.



Donald W. Molloy, District Judge
United States District Court