

FILED

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PATRICK E. DUFFY, CLERK
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

MARTIN REED SWAN,)	CV 07-16-M-DWM-JCL
)	
Petitioner,)	
)	
vs.)	ORDER
)	
MIKE MAHONEY; ATTORNEY GENERAL OF)	
THE STATE OF MONTANA,)	
)	
Respondent.)	
)	

Petitioner Martin Swan seeks a writ of habeas corpus under 28 U.S.C. § 2254. United States Magistrate Judge Jeremiah C. Lynch issued an Order on October 3, 2007 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 received inaccurate legal advice regarding the statute of limitations.

Judge Lynch issued Findings and Recommendations in which he

recommends dismissal of the Petition without prejudice as time-barred. Judge Lynch explained that reliance upon inaccurate legal advice does not constitute 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 Lynch'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 4 day of September, 2008.


Donald W. Molloy, District Judge
United States District Court