

FILED

SEP 17 2010

PATRICK E. DUFFY, CLERK

By DEPUTY CLERK, MISSOULA

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

MISSOULA DIVISION

DANIEL F. BROOKS,)	CV 10-53-M-DWM-JCL
)	
Petitioner,)	
)	
vs.)	ORDER
)	
MIKE MAHONEY; ATTORNEY)	
GENERAL OF THE STATE OF)	
MONTANA,)	
)	
Respondents.)	
_____)	

This matter was commenced by the filing of a Petition Under 28 U.S.C. § 2254 For Writ of Habeas Corpus on May 19, 2010. On May 26, 2010, Petitioner was ordered to show cause why his petition should not be dismissed with prejudice as time-barred or procedurally barred. Petitioner failed to respond to a show cause deadline, which was extended at his request. Magistrate Judge Jeremiah C. Lynch entered his Findings and Recommendations on August 13,

2010. Judge Lynch found that Brooks's petition is barred by the one-year federal statute of limitations and by the doctrine of procedural default.

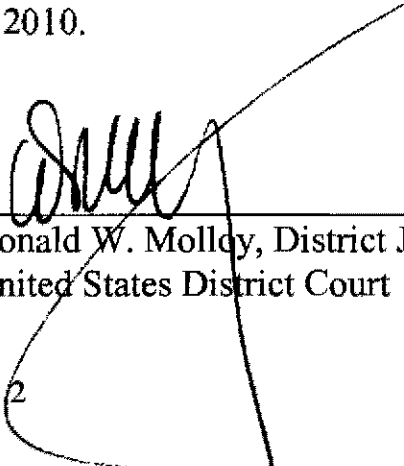
Petitioner Brooks did not timely object and so has waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court reviews the Findings and Recommendation for clear error. McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists 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 recommendation (dkt #10) and therefore adopt it in full.

IT IS HEREBY ORDERED that the Petition (dkt #1) is DISMISSED WITH PREJUDICE as both time-barred and procedurally barred.

IT IS FURTHER ORDERED that the Clerk of Court is directed to enter by separate document a judgment in favor of Respondents and against Petitioner.

A certificate of appealability is DENIED.

Dated this 17th day of September, 2010.



Donald W. Molloy, District Judge
United States District Court