

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

FILED

SEP 25 2013

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

CURTIS MITCHELL,

Petitioner,

vs.

WARDEN SAM LAW and the
ATTORNEY GENERAL OF THE
STATE OF MONTANA,

Respondent.

CV 13-60-M-DWM-JCL

ORDER

This action was filed in the United States District Court for the District of Montana, Missoula Division March 18, 2013. Petitioner Curtis Mitchell seeks a writ of *habeas corpus* under 28 U.S.C. § 2254. United States Magistrate Judge Jeremiah C. Lynch filed Findings and a Recommendation on July 31, 2013. Pursuant to 28 U.S.C. § 636(b)(1), objections to the Findings and Recommendation entered by Judge Lynch were due by August 19, 2013. No objections were filed.

The Court reviews the findings and recommendation of a United States Magistrate Judge for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error is present only 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).

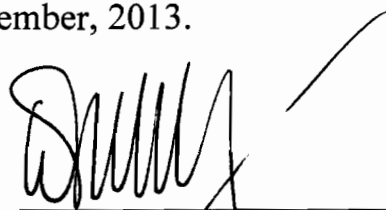
After a review of Judge Lynch’s Findings and Recommendation, I find no clear error. Petitioner seeks a writ of *habeas corpus* on the grounds that his right to due process was violated at trial before the Montana Fourth Judicial District Court, where he was convicted of aggravated assault, a violation of Montana Code Annotated § 45-5-202. Petitioner’s claims are procedurally defaulted because they were not raised on direct review. When advised of the status of his claims as procedurally defaulted, Mr. Mitchell did not show cause for setting aside his default.

Based on the foregoing, IT IS ORDERED that Judge Lynch’s Findings and Recommendations (doc. 7) are ADOPTED IN FULL. The petition is DISMISSED WITH PREJUDICE, as all claims are procedurally defaulted without excuse.

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 in favor of Respondents and against Petitioner and shall close this case.

DATED this 25th day of September, 2013.



Donald W. Molloy, District Judge
United States District Court