

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

DANNY FAULKNER,

Petitioner,

vs.

LEROY KIRKEGARD, et al.,

Respondents.

CV 15–105–M–DLC–JCL

ORDER

United States Magistrate Judge Jeremiah C. Lynch entered his Findings and Recommendations on January 25, 2016, recommending dismissal of Petitioner Danny Faulkner’s (“Faulkner”) claims. Faulkner failed to timely object to the Findings and Recommendations, and so waived his right to de novo review of the record. 28 U.S.C. § 636(b)(1)(C). This Court reviews for clear error those findings and recommendations to which no party objects. *See McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 149 (1985). 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) (citations omitted).

Having reviewed the Findings and Recommendations, the Court finds no clear error in Judge Lynch’s conclusion that Claims 2 and 3 of Faulkner’s Petition

must be dismissed as time-barred and procedurally defaulted. The Court further agrees that Claim 1 of the Petition fails to establish a constitutional violation because it impermissibly requests that this Court reexamine the Montana Supreme Court's interpretation of Montana law.

There being no clear error in Judge Lynch's Findings and Recommendations, IT IS ORDERED that:

(1) Judge Lynch's Findings and Recommendations (Doc. 9) are ADOPTED IN FULL.

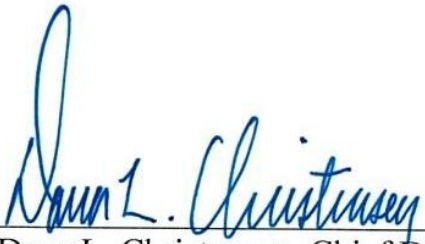
(2) Claim 1 is DISMISSED for failure to establish a constitutional violation.

(3) Claims 2 and 3 are DISMISSED as time-barred and procedurally defaulted.

(4) The Clerk of Court is directed to enter, by separate document, a judgment of dismissal.

(5) A certificate of appealability is DENIED

Dated this 3rd day of March, 2016.



Dana L. Christensen, Chief District Judge
United States District Court