

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

JAMES SHAWN JUMPING EAGLE, Petitioner, vs. UNITED STATES OF AMERICA, Respondent.	5:23-CV-05036-KES ORDER ADOPTING REPORT AND RECOMMENDATION AND DISMISSING PETITIONER'S § 2255 MOTION
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Petitioner, James Shawn Jumping Eagle, filed a motion under 28 U.S.C. § 2255 to vacate, correct, or set aside his sentence. Dockets 1, 7. Respondent moved to dismiss the action for failure to state a claim, procedural default, and violation of the statute of limitations. Docket 29. The matter was referred to United States Magistrate Judge Daneta Wollmann under 28 U.S.C. § 636(b)(1)(B) and the District of South Dakota's Civil Local Rule 72.1.A.2(b), which designates to the magistrate judge the duty to prepare proposed findings and recommendations for the disposition of habeas petitions.

On January 16, 2024, Magistrate Judge Wollman submitted a report and recommended that the United States's motion to dismiss (Docket 29) be granted and that Jumping Eagle's § 2255 motion be dismissed with prejudice as untimely. Docket 31 at 7–8. The time for objecting to the report and recommendation has passed. *See id.* The government filed a notice of no objections, Docket 32, and Jumping Eagle has not filed any objections. The

court has considered the case de novo and adopts the report and recommendation in full. Thus, it is ORDERED:

1. That the magistrate judge's report and recommendation (Docket 31) is adopted in full.
2. That the United States's motion to dismiss (Docket 29) is granted and Jumping Eagle's § 2255 motion is dismissed with prejudice.
3. For the reasons set forth herein and pursuant to Fed. R. App. P. 22(b), the court finds that Jumping Eagle has not made a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). Thus, a certificate of appealability is denied.

DATED February 5, 2024.

BY THE COURT:

/s/ Karen E. Schreier

KAREN E. SCHREIER
UNITED STATES DISTRICT JUDGE