

FILED

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JUL 25 2023

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

RUSSELL WAYNE BULLOCK,

No. 22-35996

Petitioner-Appellant,

D.C. No. 2:22-cv-00022-BMM

v.

District of Montana,

PETE BLUDWORTH, Warden;
ATTORNEY GENERAL FOR THE STATE
OF MONTANA,

Butte

Respondents-Appellees.

ORDER

Before: CLIFTON and FORREST, Circuit Judges.

Appellant's motion for reconsideration (Docket Entry No. 5) is denied. *See*
9th Cir. R. 27-10.

No further filings will be entertained in this closed case.

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No. 22-35996

D.C. No. 2:22-cv-00022-BMM
District of Montana,
Butte

ORDER

Before: CANBY and SUNG, Circuit Judges.

The court has considered appellant's filings (Docket Entry Nos. 2, 3). The request for a certificate of appealability is denied because appellant has not shown that "jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see also* 28 U.S.C. § 2253(c)(2); *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012).

Any pending motions are denied as moot.

DENIED.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION**

RUSSELL WAYNE BULLOCK,

Cause No. CV 22-22-BU-BMM-JTJ

Petitioner,

ORDER

vs.

PETE BLUDWORTH, WARDEN
CROSSROADS CORRECTIONAL
CENTER; AUSTIN KNUDSEN,
ATTORNEY GENERAL OF THE
STATE OF MONTANA,

Respondents.

Petitioner Russell Wayne Bullock (“Bullock”), a state prisoner proceeding pro se, has filed an application under 28 U.S.C. § 2254, seeking habeas corpus relief. (Doc. 1.) United States Magistrate Judge John Johnston entered his Findings and Recommendations in this case on August 29, 2022. (Doc. 6.) Magistrate Judge Johnston recommended that this matter should be DISMISSED with prejudice as time-barred and procedurally deficient, that the Clerk of Court should be directed to enter by separate document a judgment in favor of Respondents and against Petitioner, and that a certificate of appealability should be DENIED. (Doc. 6.) Bullock filed an objection to the Findings and Recommendations. (Doc. 11.)

The Court reviews *de novo* those findings and recommendations to which a

party makes an objection. 28 U.S.C. § 636(b)(1)(C). Where a party's objections constitute perfunctory responses that seek to engage the district court in a relitigation of the same arguments set forth in the complaint, however, the Court reviews for clear error the applicable portions of the findings and recommendations. *Rosling v. Kirkegard*, 2014 WL 693315, at *3 (D. Mont. Feb. 21, 2014) (internal citations omitted). The Court also reviews for clear error the portion of the Findings and Recommendations to which the party did not specifically object. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). The Court reviewed Magistrate Judge Johnston's Findings and Recommendations and adopts them in full for the reasons discussed below.

Bullock objects to Magistrate Judge Johnston's finding that Bullock's petition should be dismissed as untimely. (Doc. 11.) The Court provided Bullock three different ways to show cause why his petition should not be time-barred in its Order to Show Cause. (Doc. 3.) Bullock responded to the Court's Order to Show Cause on May 23, 2022. (Doc. 4.) Bullock did not dispute that his filing is untimely in his response. He also did not show that he has been pursuing his rights diligently, but an extraordinary circumstance stood in his way and prevented him from filing on time. *Holland v. Florida*, 560 U.S. 631, 649 (2010).

Bullock did not then raise relevant health concerns or medical procedures as

“extraordinary circumstances” to excuse his untimely habeas petition. (Doc. 4.) Bullock now asserts that his untimely filing was due to health reasons, including two heart attacks and heart surgery recovery. (Doc. 11 at 1.) Bullock does not dispute that his filing in this Court is untimely. (*Id.*) Bullock fails to provide evidence or documentation of his medical conditions and surgery. Bullock did file Exhibits attached to his petition (Doc. 1-2) containing over 150 pages, some of which include personal medical records. None of those personal medical records, however, are specific to cardiac issues or surgery. The Court reviewed de novo Magistrate Judge Johnston’s Findings and Recommendations. The Court determines that Bullock failed to present an “extraordinary circumstance” that prevented him from filing on time.

Bullock’s objections otherwise advance the same arguments that he raised before. The Court will not engage in Bullock’s attempt to reargue the same issues. The Court reviewed Magistrate Judge Johnston’s Findings and Recommendations for clear error. The Court finds no error.

Bullock did not raise any specific objections to Magistrate Judge Johnston’s finding that a certificate of appealability should be denied. (*See* Doc. 11.) This Court’s review is therefore limited to clear error. *McDonnell Douglas Corp.*, 656 F.2d at 1313. The Court finds no legal error in Magistrate Judge Johnston’s Findings and Recommendations regarding a certificate of appealability.

IT IS ORDERED that Magistrate Judge Johnston's Findings and Recommendations (Doc. 6) are **ADOPTED IN FULL**.

1. Bullock's Petition (Doc. 1) is **DISMISSED WITH PREJUDICE**,
2. The Clerk of Court is directed to enter judgment of dismissal by separate document; and
3. A certificate of appealability is **DENIED**.

DATED this 15th day of November, 2022.



Brian Morris, Chief District Judge
United States District Court

**Additional material
from this filing is
available in the
Clerk's Office.**