

**UNITED STATES COURT OF APPEALS**  
**TENTH CIRCUIT**

---

**JUN 22 2001**

**PATRICK FISHER**  
Clerk

CONRAD BEHRING,

Petitioner - Appellant,

v.

ERASMO BRAVO, Warden,  
Guadalupe County Correctional  
Facility, ATTORNEY GENERAL  
FOR THE STATE OF NEW MEXICO,

Respondents - Appellees.

No. 00-2488

(D. New Mexico)

(D.C. No. CIV-00-854-LH/RLP)

---

**ORDER AND JUDGMENT** \*

---

Before **HENRY**, **BRISCOE**, and **MURPHY**, Circuit Judges.

---

After examining the briefs and appellate record, this panel has determined unanimously to honor the parties' request for a decision on the briefs without oral

---

\* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

argument. See Fed. R. App. P. 34(f). The case is therefore submitted without oral argument.

Petitioner Conrad Behring, a state prisoner appearing pro se, seeks a certificate of appealability (“COA”) allowing him to appeal the district court’s order denying relief on his 28 U.S.C. § 2254 petition for a writ of habeas corpus. Because Mr. Behring has failed to make “a substantial showing of the denial of a constitutional right” under 28 U.S.C. § 2253(c)(2), we deny his request for a COA and dismiss his appeal.

In 1998, Mr. Behring entered a guilty plea to two counts of homicide by vehicle, one count of great bodily injury by vehicle, and one count of aggravated driving while under the influence of intoxicating liquor (second offense), all in violation of New Mexico law. At the time of his guilty plea, Mr. Behring was represented by counsel. He was sentenced to twelve years’ imprisonment, followed by two years’ parole. Mr. Behring’s counsel filed an appeal questioning whether the length of his sentence was based on a proper interpretation of the relevant statute. The sentence was then affirmed by the New Mexico Court of Appeals, as the statutory interpretation issue had been resolved in a different case during the pendency of Mr. Behring’s appeal.

Proceeding pro se, Mr. Behring then filed a petition for writ of habeas corpus in state court. This petition raised the following claims: that his

indictment on two counts of vehicular homicide violated the Double Jeopardy Clause of the Constitution, as it arose from a single car accident (even though that accident killed two people); that his counsel had been ineffective for failing to raise this issue; and that he had been incompetent to plead guilty. The petition was denied by the New Mexico district court, as was his petition for writ of certiorari to the Supreme Court of the State of New Mexico.

On June 12, 2000, Mr. Behring filed the instant petition for writ of habeas corpus with the federal district court. On Sept. 25, 2000, the magistrate judge recommended that the petition be dismissed with prejudice. The district court adopted this recommendation on Nov. 13, 2000, and denied a COA on December 7, 2000 .

We have reviewed the magistrate judge's recommended disposition, the district court order, Mr. Behring's submissions to this court, and the record on appeal. For substantially the same reasons as set forth by the magistrate judge and the district court (particularly that "each individual killed is a separate count and does not violate double jeopardy," see Rec. Doc. 4), we agree that Mr. Behring has failed to make "a substantial showing of the denial of a constitutional right," as required by 28 U.S.C. § 2253.

We therefore DENY Mr. Behring's request for a COA and DISMISS this appeal.

Entered for the Court,

Robert H. Henry  
Circuit Judge