

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

**MAR 22 2001**

**PATRICK FISHER**  
Clerk

JAMES E. POINTER,

Petitioner-Appellant,

v.

RON WARD,

Respondent-Appellee.

No. 00-6371

(D.C. No. 97-CV-1003-C)  
(W.D.Okla.)

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**ORDER AND JUDGMENT** \*

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

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After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

Petitioner James E. Pointer, an inmate proceeding pro se, seeks a certificate of appealability to appeal the denial of his 28 U.S.C. § 2254 petition. We deny a

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\*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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.

certificate of appealability and dismiss the appeal.

Pointer pleaded guilty to escape, injury to a public building, injury to a public building and attempted escape, and escape from county jail, all after former conviction of two or more felonies. He was sentenced to a total of twenty years' imprisonment to be served consecutively with two unrelated convictions. In his petition, Pointer contended (1) the State of Oklahoma imposed an unconstitutional burden upon him to establish his incompetency, resulting in a violation of due process; (2) his sentences were enhanced by invalid prior convictions; (3) he was coerced into pleading guilty; (4) the constitutional prohibition against double jeopardy was violated; (5) his pleas were not knowingly and voluntarily entered; and (6) the state breached the plea agreement. The magistrate judge recommended denial of the petition. Pointer filed his objections to the magistrate's report. The district court adopted the magistrate's report and recommendation in its entirety and denied Pointer's habeas petition.

On appeal, Pointer contends the district court denied his petition without an evidentiary hearing and his plea agreement was breached. We have reviewed Pointer's appellate brief and the entire record on file. Because Pointer has not made a "substantial showing of the denial of a constitutional right," 28 U.S.C. § 2253(c)(2), we deny a certificate of appealability for substantially the reasons set forth in the magistrate's very thorough report and recommendation dated

August 24, 2000, and the district court's order dated September 27, 2000.

The request for a certificate of appealability is DENIED and the appeal is DISMISSED. The request to proceed in forma pauperis on appeal is DENIED.

The mandate shall issue forthwith.

Entered for the Court

Mary Beck Briscoe  
Circuit Judge