

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

JAN 31 2002

PATRICK FISHER
Clerk

UNITED STATES OF AMERICA

Plaintiff - Appellee,

v.

ALBERT PIKE BALLEW a/k/a
George Lawson Ballew,

Defendant - Appellant.

No. 01-5149

(D.C. Nos. 01-CV-160-H,
99-CR-15-H)

(N.D. Okla.)

ORDER AND JUDGMENT*

Before **SEYMOUR** and **McKAY**, Circuit Judges, and **BRORBY**, Senior Circuit Judge.

After examining the briefs and the 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.

This is a pro se § 2255 prisoner appeal. Mr. Ballew pleaded guilty to engaging in a conspiracy to distribute methamphetamine, in violation of 21 U.S.C.

*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

§ 846. Mr. Ballew filed a Motion to Vacate, Set Aside, or Correct a Federal Sentence with the District Court for the Northern District of Oklahoma. The district court denied the motion, holding that Mr. Ballew knowingly and voluntarily entered his plea of guilty and knowingly and voluntarily waived his appellate rights. The district court also held that Mr. Ballew failed to allege any fact showing that his counsel's conduct was unreasonable as the term is defined in Strickland v. Washington, 466 U.S. 668, 688 (1984). Finding no merit in any of Mr. Ballew's arguments, the court declined to grant him a certificate of appealability. Appellant then applied to this court for a certificate of appealability.

In order for this court to grant a certificate of appealability, Appellant must make a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To do so, Appellant must demonstrate that "reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." Slack v. McDaniel, 529 U.S. 473, 484 (2000) (quotations omitted).

We have carefully reviewed Mr. Ballew's briefs, the district court's disposition, and the record on appeal. Nothing in the facts, the record on appeal, or Appellant's briefs raises an issue which meets our standards for the grant of a

certificate of appealability. We conclude that for substantially the same reasons as set forth by the district court in its Order of August 8, 2001, we cannot say that “reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner.” Id. We **DENY** Appellant’s request for a certificate of appealability and **DISMISS** the appeal.

Entered for the Court

Monroe G. McKay
Circuit Judge