

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

FEB 3 2003

PATRICK FISHER
Clerk

JONATHAN BRADY,

Petitioner - Appellant,

v.

TIM LEMASTER, Warden,
New Mexico State Penitentiary;
ATTORNEY GENERAL FOR THE
STATE OF NEW MEXICO,

Respondents - Appellees.

No. 02-2036
D.C. No. CIV-00-656-LH/WWD
(D. New Mexico)

ORDER AND JUDGMENT *

Before **SEYMOUR**, **EBEL**, and **O'BRIEN**, Circuit Judges.

After examining appellant's brief 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* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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.

Jonathan Brady, a New Mexico prisoner, requests a certificate of appealability (COA) to appeal the district court’s denial of his petition for habeas corpus filed under 28 U.S.C. § 2254. A COA may be issued only when there is “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). To demonstrate his entitlement to a COA, Mr. Brady must show “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, 483-84 (2000) (quotation omitted).

On appeal, Mr. Brady argues that the district court erred in failing to require the State of New Mexico’s Department of Corrections to implement a statutorily mandated alternative incarceration program under N.M. Stat. Ann. § 31-18-22, under which appellant was constitutionally entitled to apply for relief.

We have reviewed appellant’s brief and appendix. We find no error, and affirm for the reasons stated by the magistrate judge, as adopted by the district court.

Appellant's application for a certificate of appealability is DENIED and the appeal is DISMISSED.

Entered for the Court

David M. Ebel
Circuit Judge