

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

**AUG 8 2002**

**PATRICK FISHER**  
Clerk

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ALFRED RAY CESSPOOCH,

Defendant - Appellant.

No. 02-4008

(D.C. No. 2:99-CV-320-W,  
2:93-CR-281-W)

(D. Utah)

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**ORDER AND JUDGMENT\***

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Before **KELLY, McKAY, and MURPHY**, Circuit Judges.

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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. Cesspooch was convicted of assault resulting in bodily injury, assault with a dangerous weapon, and aggravated sexual abuse, all while within Indian Territory. He was sentenced to

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\*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

390 months' imprisonment, 60 months' supervised release, and \$14,205 restitution. We affirmed his sentence and conviction on direct appeal. See United States v. Cesspooch, No. 97-4013, 1998 WL 208874 (10th Cir. Apr. 29, 1998).

On May 5, 1999, Appellant filed his § 2255 motion in the district court. The next docket entry after the notice of filing of the § 2255 motion is the district court's November 8, 2001, Order dismissing the case for lack of prosecution. No further filings have been made. Subsequently, Appellant 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. Cesspooch's brief, the district court's disposition, and the record on appeal. Nothing in the facts, the record on appeal, or Appellant's brief raises an issue which meets our standards for the grant of a certificate of appealability. 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. Appellant’s Motion for Reconsideration, “Special Motion for Appointment of Counsel,” “Motion Objection of Anything Stricken from the Docket,” “Motion Denied Due Process of Institution,” and “Motion Denied of Due Process of Clerk Office” are **DENIED**. Appellant’s Motion to amend his opening brief is **GRANTED**.

Entered for the Court

Monroe G. McKay  
Circuit Judge