

February 9, 2011

UNITED STATES COURT OF APPEALS

Elisabeth A. Shumaker  
Clerk of Court

TENTH CIRCUIT

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GABRIEL A. MARTINEZ,

Petitioner-Appellant,

v.

ROBERT KURTZ, Warden of  
C.D.O.C., and THE ATTORNEY  
GENERAL OF THE STATE OF  
COLORADO,

Respondents-Appellees.

No. 10-1430

(D.C. No. 1:08-CV-01220-CMA-MEH)

(D. Colo.)

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**ORDER DENYING CERTIFICATE OF APPEALABILITY\***

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

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Petitioner seeks a certificate of appealability to appeal the district court's denial of his 28 U.S.C. § 2254 habeas petition. Following a jury trial, Petitioner was convicted on drug and child pornography charges. He was also convicted on a special offender charge based on a firearm that was found in close proximity to the methamphetamine in his bedroom. On direct appeal, Petitioner alleged several grounds for relief, including a Fourth Amendment claim, an overbreadth

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\* This order is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

and void-for-vagueness challenge to the special offender statute, and claims of insufficient evidence as to the child pornography and methamphetamine manufacturing charges. The Colorado Court of Appeals considered and rejected all of these arguments in a lengthy published opinion, *see People v. Martinez*, 165 P.3d 907 (Colo. App. 2007), and the Colorado Supreme Court denied certiorari.

Petitioner then filed the instant federal habeas petition, in which he raised the same grounds for relief. The magistrate judge concluded that Petitioner had not established that he was entitled to federal habeas relief under the controlling standards set forth in 28 U.S.C. § 2254. The district court agreed and accordingly dismissed Petitioner's habeas petition.

After carefully reviewing Petitioner's filings and the record on appeal, we conclude that reasonable jurists would not debate whether the district court erred in dismissing the petition. *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000). For substantially the same reasons discussed at length by the state appellate court, the magistrate judge, and the federal district court, we **DENY** the application for a certificate of appealability and **DISMISS** the appeal.

ENTERED FOR THE COURT

Monroe G. McKay  
Circuit Judge