

August 24, 2010

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

CARL GENE LEE, SR.,

Petitioner - Appellant,

v.

STATE OF UTAH,

Respondent - Appellee.

No. 10-4047
(D.C. No. 2:09-CV-00709-DAK)
(D. Utah)

ORDER
DENYING CERTIFICATE OF APPEALABILITY

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

Plaintiff-Appellant Carl Gene Lee, Sr., a state inmate proceeding pro se, seeks a certificate of appealability (“COA”) allowing him to appeal the district court’s order dismissing his petition for a writ of habeas corpus. Mr. Lee has not made the necessary “substantial showing of the denial of a constitutional right” to obtain a COA. 28 U.S.C. § 2253(c)(2); see Slack v. McDaniel, 529 U.S. 473, 483-84 (2000). Therefore, we deny a COA and dismiss the appeal.

In August 2009, Mr. Lee filed a one-page, handwritten habeas petition along with almost thirty pages of Utah state court filings and correspondence with the Utah State Bar and various attorneys. 1 R. 4-31. The district court found the petition indecipherable, ordered the clerk to mail Mr. Lee forms and instructions

for filing a petition, and instructed Mr. Lee to complete the form petition “in an organized, concise fashion.” Id. at 32. The court warned Mr. Lee that failure to comply risked dismissal. Id. Mr. Lee submitted another handwritten letter and attachments. Id. at 33-36. The court found this submission non-responsive and dismissed the petition. Id. at 38.

Mr. Lee appeals, but before exercising jurisdiction over his appeal we must grant a COA. 28 U.S.C. § 2253(c)(1); Miller-El v. Cockrell, 537 U.S. 322, 342 (2003). We will issue a COA to appeal a procedural ruling only if the petitioner shows that “that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and . . . whether the district court was correct in its procedural ruling.” Slack, 529 U.S. at 484. In his COA application and brief, Mr. Lee claims that he still does not understand how to submit a habeas petition without an attorney. Pet. Br. at 2-3. The district court gave Mr. Lee a reasonable opportunity to remedy the defects in his petition. But Mr. Lee did not comply with the court’s instructions, and ignored his basic obligation to provide sufficient facts on which to base a claim. Hall v. Bellmon, 935 F.2d 1106, 1110 (10th Cir. 1991).

Without any basis to question the district court's procedural ruling, we DENY a COA and any other pending motions, and DISMISS the appeal.

Entered for the Court

Paul J. Kelly, Jr.
Circuit Judge