

UNITED STATES COURT OF APPEALS

Filed 4/24/96

TENTH CIRCUIT

WILLIAM LUCKY LENHART,

Petitioner - Appellant,

v.

R. MICHAEL CODY and ATTORNEY
GENERAL OF THE STATE OF
OKLAHOMA,

Respondents - Appellees.

No. 95-6335

(D.C. No. CIV-95-1123-M)

(W.D. Okla.)

ORDER AND JUDGMENT*

Before PORFILIO, McKAY, and KELLY, Circuit Judges.

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); 10th Cir. R. 34.1.9. The case is therefore ordered submitted without oral argument.

Petitioner is asserting a right to counsel in his first state post-conviction

*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

proceeding because he did not use his right to counsel through a direct appeal. He argues that the post-conviction proceeding should be considered his first appeal because he never had a direct appeal from his guilty plea. The district court rejected this argument. We affirm for substantially the reasons given in the magistrate judge's report and recommendation as adopted by the district court. Also, Petitioner claims that he was never advised of his right to direct appeal. This issue was not exhausted by the state's highest court. Petitioner must completely exhaust all state remedies before resorting to the federal courts. Anderson v. Harless, 459 U.S. 4 (1982). We dismiss this claim without prejudice.

AFFIRMED in part and DISMISSED in part. The mandate shall issue forthwith.

Entered for the Court

Monroe G. McKay
Circuit Judge