UNITED STATES COURT OF APPEALS

Filed 7/30/96

TENTH CIRCUIT

DAVID ROBIN WHITMORE, Petitioner-Appellant, v. RON CHAMPION, Respondent-Appellee.	No. 96-6051 (W.D. Oklahoma) (D.C. No. CIV-95-134-R)

ORDER AND JUDGMENT*

Before **ANDERSON**, **BARRETT**, and **MURPHY**, Circuit Judges.

After examining the briefs and the appellate record, this three-judge panel has determined unanimously that oral argument would not be of material assistance in the determination of this appeal. *See* Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. The cause 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This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata and collateral estoppel.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.

Petitioner David Robin Whitmore proceeding *pro se* and *in forma pauperis* appeals from an order of the district court dismissing his 28 U.S.C. § 2254 petition for a writ of habeas corpus. According to Whitmore, the district court erred in reaching the following conclusions: (1) Whitmore's guilty plea was voluntary; and (2) Whitmore's guilty plea was not the result of ineffective assistance of counsel. Finding that Whitmore is not entitled to a certificate of appealability, we dismiss the appeal.

This court is required to examine the appeal of a denial of a writ of habeas corpus to determine whether the petitioner has made a "substantial showing of the denial of a constitutional right." Antiterrorism and Effective Death Penalty Act of 1996 (the "Act'), Pub. L. No. 104-132, 28 U.S.C. § 2253(c). This court has held that the standard for granting a certificate of appealability under the Act is the standard set out by the Supreme Court in *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983). Under this standard, a certificate of appealability will issue only where the petitioner has demonstrated the issues raised by the petition are debatable among jurists of reason, a court could resolve the issues differently, or the questions presented are deserving of further proceedings. *Id.*

We have reviewed the magistrate's report and recommendation, the district court's order, Whitmore's brief and application for a certificate of appealability, and the entire record before us on appeal. We conclude that Whitmore has failed

to make a "substantial showing of the denial of a constitutional right" for the reasons set forth in the magistrate's report and recommendation and the district court's order. Accordingly, we **DENY** Whitmore's application for a certificate of appealability and **DISMISS** the appeal.

ENTERED FOR THE COURT

Michael R. Murphy
Circuit Judge