

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

**MAY 6 1998**

**PATRICK FISHER**  
Clerk

RONNIE DIAL,

Petitioner - Appellant,

v.

ROBERT D. HANNIGAN and  
ATTORNEY GENERAL OF  
KANSAS,

Respondents - Appellees.

No. 97-3235  
(D.C. No. 97-CV-3031)  
(D. Kan.)

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**ORDER AND JUDGMENT\***

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Before **PORFILIO, KELLY, and HENRY**, Circuit Judges.\*\*

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Mr. Dial seeks to appeal from the denial of his habeas corpus petition, 28 U.S.C. § 2254. In his petition, Mr. Dial argues that the Kansas Sentencing Guidelines Act, as amended effective July 1, 1993, see Kan. Stat. Ann. §§ 21-4701 to 21-4728 (1995), and its retroactivity provision, see id. § 21-4724, violate

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\* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

\*\* 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.

equal protection. Mr. Dial's view essentially is that all convictions should be eligible for retroactive application of the Guidelines and that any equal protection challenge should be evaluated on the basis of strict scrutiny.

Both the Kansas state courts and the district court have rejected similar arguments. See Chiles v. State, 869 P.2d 707, 714-18 (Kan.), cert. denied, 513 U.S. 850 (1994); Jones v. Bruce, 921 F. Supp. 708, 710-12 (D. Kan. 1996). We are likewise unpersuaded. Mr. Dial has not shown that his circumstances are similar to those in State v. Fierro, 895 P.2d 186, 189-91 (Kan. 1995), thus, Fierro does not support his position.

We DENY Mr. Dial's Application for a Certificate of Appealability and DISMISS the appeal. All pending motions are denied.

Entered for the Court

Paul J. Kelly, Jr.  
Circuit Judge