

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

OCT 21 1998

PATRICK FISHER
Clerk

TROY DION MELONS,

Petitioner-Appellant,

v.

ARI ZAVARAS; ATTORNEY GENERAL
OF THE STATE OF COLORADO,

Respondents-Appellees.

No. 98-1208
(D. Colo.)
(D.Ct. No. 98-D-370)

ORDER AND JUDGMENT*

Before **SEYMOUR, BRORBY, and BRISCOE**, Circuit Judges.

After examining the briefs and 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.

* This order and judgment is not binding precedent except under the doctrines of law of the case, *res judicata* and collateral estoppel.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

Mr. Melons, a state inmate and *pro se* litigant, appeals the district court's denial of his petition brought pursuant to 28 U.S.C. § 2254. Mr. Melons first asks us to grant a certificate of appealability and then requests a reversal of the district court's order. For the reasons stated below, we deny the application of appealability and dismiss the appeal. We further deny Mr. Melons' application for *in forma pauperis* status to proceed on appeal without prepayment of costs and fees.

Mr. Melons entered into a plea agreement whereby a charge of sexual assault was dropped in exchange for a guilty plea to second degree kidnaping. Mr. Melons was sentenced to nine years in prison. In his habeas petition, he alleged improper classification by the Department of Corrections as a sex offender, thus leading to a denial of parole for failure to participate in a sex offender program. Mr. Melons alleged his improper classification as a sex offender violated his unspecified constitutional rights.

The district court gave Mr. Melons the benefit of liberal construction by construing his habeas petition as a claim that Mr. Melons has a liberty interest in his prison classification, which prevents prison officials from 1) classifying him as a sex offender and 2) recommending he participate in the prison's sex offender

treatment program, without adequate due process. The district court opined Mr. Melons had no liberty interest in his prison classification under either the Constitution or state law and denied Mr. Melons' habeas petition. The district court also denied Mr. Melons' application for a certificate of appealability as his claim is not debatable among jurists of reason, cannot be resolved differently, and is not deserving of further proceedings. The district court further denied Mr. Melons' motion to proceed pursuant to 28 U.S.C. § 1915, finding Mr. Melons has not shown the existence of a reasoned, nonfrivolous argument on the law and facts in support of the issues raised.

Mr. Melons appeals these decisions asserting, "I'm being told, I don't have a libert[y] interest in my case ... and I fill [sic] that's not right. Because I do." He further argues to us, "my plea agreement is not being honored by the courts."

For us to grant Mr. Melons a certificate of appealability, he must make a substantial showing of the denial of an important federal right by demonstrating the issues raised are debatable among jurists, that a court could resolve the issues differently, or that the questions deserve further proceedings. *See Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983). Mr. Melons has failed to make this showing. The district court's analysis was correct, and therefore we attach copies

of the district court's Order of Dismissal and Order Denying Certificate of Appealability hereto. For substantially the same reasons set forth in the district court orders, we conclude Mr. Melons has not made a substantial showing of a denial of a constitutional right as required by 28 U.S.C. § 2253(c)(2).

Accordingly, the certificate of appealability is **DENIED** and the appeal is **DISMISSED**. The request to proceed on appeal as *in forma pauperis* is similarly **DENIED**.

Entered by the Court:

WADE BRORBY
United States Circuit Judge

Attachment not available electronically.