

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

AUG 19 1999

PATRICK FISHER
Clerk

JOHN DONALD CASKEY,

Petitioner-Appellant,

v.

GARY STARBUCK, in his official
capacity as Wyoming Department of
Corrections Honor Farm
Superintendent; and WYOMING
ATTORNEY GENERAL,

Respondents-Appellees.

No. 98-8097
(D.C. No. 96-CV-1024-D)
(D. Wyo.)

ORDER AND JUDGMENT*

Before **BRORBY**, **EBEL** and **LUCERO**, Circuit Judges.

In February 1994, petitioner-appellant John Donald Caskey pled guilty to taking indecent liberties with a child, in violation of Wyo. Stat. § 14-3-105. In May 1996, Caskey filed a petition for writ of habeas corpus under 28 U.S.C.

*After examining appellant's brief 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)(2) and 10th Cir. R. 34.1(G). 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 This Order and Judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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.

§ 2254, claiming ineffective assistance of counsel, involuntary plea, and insufficient evidence. The magistrate judge recommended that the petition be dismissed for failure to exhaust state remedies. After consideration of Caskey's objections, the district court adopted the magistrate's report and recommendation, denied habeas relief, dismissed the petition without prejudice, and denied Caskey's motion for a certificate of appealability. We exercise jurisdiction under 28 U.S.C. § 1291 and affirm.

We review the district court's factual findings for clear error and its legal conclusions de novo. Matthews v. Price, 83 F.3d 328, 331 (10th Cir. 1996).

Caskey filed a petition for writ of habeas corpus in the Wyoming Supreme Court alleging essentially the same constitutional claims he raises in his federal petition under § 2254. That former petition was dismissed, however, because habeas corpus relief in Wyoming is limited to claims of jurisdictional defect, which Caskey did not assert. The proper avenue for Caskey's constitutional claims is Wyoming's post-conviction relief process under Wyo. Stat. § 7-14-101. Caskey has yet to avail himself of this procedure. Thus, the federal issues presented in his § 2254 petition have not been properly presented to the state court. Because Caskey has failed to exhaust his state remedies, the district court properly denied habeas relief.

Caskey has not made a “substantial showing of the denial of a constitutional right,” as required under 28 U.S.C. § 2253(c). We therefore DENY Caskey’s request for a certificate of appealability, DENY his motions for leave to proceed on appeal in forma pauperis and for appointment of counsel, and DISMISS the appeal. The court’s show cause order of November 13, 1998 is DISCHARGED.

The mandate shall issue forthwith.

ENTERED FOR THE COURT

David M. Ebel
Circuit Judge