

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

**MAR 14 2000**

**PATRICK FISHER**  
Clerk

DARREL JOSEPH GOURLEY,  
Petitioner - Appellant,

v.

DAVID MCKUNE, Warden, and  
ATTORNEY GENERAL OF  
KANSAS,

Respondents - Appellees.

No. 99-3158

(D.C. No. 95-CV-3481-DES)

(D. Kan.)

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**ORDER AND JUDGMENT\***

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Before **TACHA, McKAY, and MURPHY**, Circuit Judges.

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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)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

Petitioner-Appellant Darrel Joseph Gourley, appearing *pro se*, appeals the order of the district court denying his petition for writ of habeas corpus under 28

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\*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

U.S.C. § 2254. As a preliminary matter, Appellees raise an issue of timeliness in filing the notice of appeal. We conclude that Mr. Gourley's appeal is timely and that we have jurisdiction pursuant to Smith v. Barry, 502 U.S. 244, 248-49 (1992).

Mr. Gourley is currently serving sentences of life for first degree murder, fifteen years to life for aggravated burglary, and nine years to life for felony theft as a result of 1977 convictions in state court. In his habeas petition before the district court, Mr. Gourley raised seven different claims of constitutional violation that occurred in the course of his trial in the state court system. After considering and rejecting each claim, the district court denied Mr. Gourley's petition. This appeal followed, raising essentially the same constitutional claims.

After review, we conclude that the district court's decision is correct on the law and is fully supported by the record.

We **DENY** the certificate of appealability and **AFFIRM** for the reasons set forth in the district court's Memorandum and Order.

Entered for the Court

Monroe G. McKay  
Circuit Judge