

UNITED STATES COURT OF APPEALS

March 20, 2014

FOR THE TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

LAWRENCE L. MAYES,

Petitioner-Appellant,

v.

STATE OF OKLAHOMA;
COUNTY OF OKLAHOMA,

Respondents-Appellees.

No. 13-6280
(D.C. No. 5:13-CV-01080-C)
(W.D. Okla.)

ORDER DENYING CERTIFICATE OF APPEALABILITY*

Before **KELLY, MATHESON, and BACHARACH**, Circuit Judges.

Lawrence L. Mayes seeks a certificate of appealability (COA) to secure review of a district court order dismissing his “Petition of Notice of Intent to Appeal from the Court of Criminal Appeals” as a second-or-successive habeas petition lacking the authorization required by 28 U.S.C. § 2244(b)(3). The district court’s disposition was indisputably correct and this effort to appeal that disposition is frivolous. We deny a COA, dismiss the appeal, and deny Mr. Mayes’ motion for leave to proceed on appeal in forma pauperis.

* This order is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

The “petition” Mr. Mayes filed in the district court challenges the same 2005 armed robbery conviction that he has unsuccessfully challenged numerous times in pleadings filed both with the district court and this court. The district court properly held that the novel label he applied to this latest pleading—styling it as an inapt “appeal” from proceedings in the Oklahoma Court of Criminal Appeals—did not alter the fact that it was a second-or-successive habeas petition. As such, it is subject to the constraints in § 2244(b), in particular to the jurisdictional requirement of pre-authorization by this court under § 2244(b)(3), with which Mr. Mayes did not comply.¹ Dismissal was undebatably the appropriate disposition by the district court and, thus, a COA is unwarranted. *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (holding in pertinent part that to obtain a COA the petitioner-appellant must show “that jurists of reason would find it debatable whether the district court was correct in its procedural ruling”).

Accordingly, we deny a COA and dismiss this appeal. Mr. Mayes’ motion for leave to proceed on appeal in forma pauperis is also denied. We remind Mr. Mayes that his obligation to remit the full amount of the filing fee persists despite our denial

¹ We note that a separately pursued motion from Mr. Mayes seeking such authorization for claims that are also asserted in the “petition” here was recently denied as meritless by this court.

of a COA and dismissal of this appeal. *See Clark v. Oklahoma*, 468 F.3d 711, 714-15 (10th Cir. 2006).

Entered for the Court

A handwritten signature in cursive script, reading "Elisabeth A. Shumaker", written in black ink on a white background.

ELISABETH A. SHUMAKER, Clerk