

UNITED STATES COURT OF APPEALS

Filed 8/30/96

TENTH CIRCUIT

CHARLES CHAPMAN THAMER, II,

Petitioner - Appellant,

vs.

PAUL GRAF, UTAH STATE
CORRECTIONS and JAY GRAHAM,
Attorney General of the State of Utah,

Respondents - Appellees.

No. 95-4192
(D.C. No. 94-CV-969)
(D. Utah)

ORDER AND JUDGMENT*

Before SEYMOUR, Chief Judge, KELLY and LUCERO, Circuit Judges.**

Petitioner Charles Chapman Thamer appeals from the district court's denial of his petition for a writ of habeas corpus. The district court adopted the magistrate judge's report and recommendation which characterized the petition as largely unintelligible, successive and containing unexhausted claims. The district court also noted that no

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

objection was taken to the magistrate's report and recommendation, 1 R. doc. 8, despite the required advice. See 1 R. doc. 6 at 3-4; Moore v. United States, 950 F.2d 656, 659 (10th Cir. 1991).

We construe Mr. Thamer's application of a certificate of probable cause as an application for a certificate of appealability now required by 28 U.S.C. § 2253(c)(2). See Lennox v. Evans, No. 96-6041, 1996 WL 343632 at *1 (10th Cir. June 24, 1996). The Application is DENIED for want of "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). All pending motions are DENIED and the appeal is DISMISSED.

The mandate shall issue forthwith.

Entered for the Court

Paul J. Kelly, Jr.
Circuit Judge