

FILED

United States Court of Appeals  
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

December 13, 2023

Christopher M. Wolpert  
Clerk of Court

VERNON MIGUEL CHILTON,

Petitioner - Appellant,

v.

EL PASO COUNTY SHERIFF'S  
OFFICE,

Respondent - Appellee.

No. 23-1250  
(D.C. No. 1:23-CV-00821-LTB)  
(D. Colo.)

ORDER AND JUDGMENT\*

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

Mr. Vernon Chilton sought habeas relief, but the district court found deficiencies in his petition and ordered the filing of a corrected version. Mr. Chilton didn't file a corrected version in the time allotted, and the district court dismissed the petition without prejudice.

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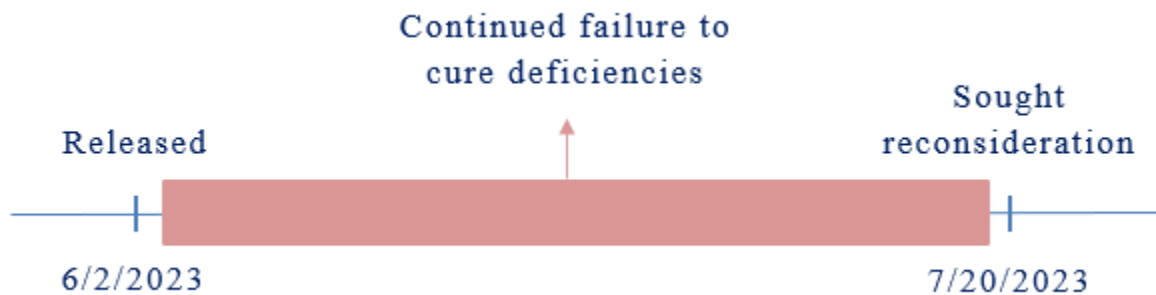
\* Oral argument would not help us decide the appeal, so we have decided the appeal based on the record and the parties' briefs. *See* Fed. R. App. P. 34(a)(2)(C); 10th Cir. R. 34.1(G).

Our order and judgment does not constitute binding precedent except under the doctrines of law of the case, *res judicata*, and collateral estoppel. But the order and judgment may be cited for its persuasive value if otherwise appropriate. *See* Fed. R. App. P. 32.1(a); 10th Cir. R. 32.1(A).

Mr. Chilton moved to vacate the dismissal, arguing that he had been committed to a mental hospital and unable to communicate with the district court. The court characterized the filing as a motion to reconsider and denied the motion, reasoning in part that Mr. Chilton still hadn't corrected the errors from his habeas petition.

Mr. Chilton wants to appeal. To appeal, however, he needs a certificate of appealability. 28 U.S.C. § 2253(c)(1)(A). We can grant a certificate only if Mr. Chilton showed that the procedural ruling was at least debatable. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

We assess this showing based on the district court's explanation for refusing to vacate the dismissal: that Mr. Chilton hadn't cured the deficiencies in the petition. As the court reasoned, Mr. Chilton had urged reconsideration based on his inability to cure the deficiencies while he was housed in a mental hospital. But he had left the mental hospital on June 2, 2023, and he still hadn't cured the deficiencies when seeking reconsideration on July 20, 2023.



If we were to grant a certificate of appealability and consider this appeal, Mr. Chilton’s threshold obligation would be to show how the district court had erred in denying his motion for reconsideration. *Nixon v. City & Cnty. of Denver*, 784 F.3d 1364, 1366 (10th Cir. 2015). But Mr. Chilton doesn’t say how the district court erred in relying on his continued failure to cure the deficiencies in his petition.

Instead, Mr. Chilton argues that his underlying claims have merit and insists that he couldn’t cure the deficiencies while he was in a mental hospital. But the district court relied on the failure to cure the deficiencies after Mr. Chilton had left the mental hospital, and he doesn’t identify any flaws in the district court’s reasoning. In these circumstances, no jurist could reasonably question the district court’s decision to deny the motion for reconsideration. So we deny a certificate of appealability and dismiss the appeal.

Though we dismiss the appeal, we must consider Mr. Chilton’s motion for leave to proceed in forma pauperis. He can’t afford to prepay the filing fee, so we grant this motion.

Entered for the Court

Robert E. Bacharach  
Circuit Judge