

UNITED STATES COURT OF APPEALS **January 15, 2008**

TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

CLOYCE CULVER,

Petitioner - Appellant,

v.

JAY SHELDON, Warden, Norton
Correctional Facility; STATE OF
KANSAS; PHILL KLINE, Attorney
General of Kansas,

Respondents - Appellees.

No. 07-3248

(D. Kansas)

(D.C. No. 06-CV-3350-JTM)

ORDER AND JUDGMENT*

Before **KELLY, ANDERSON,** and **MURPHY,** Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in 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.

*This order and judgment is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel.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

Cloyce Culver pled guilty to one count of aggravated indecent liberties with a minor, in violation of Kan. Stat. Ann. § 21-3504. He moved to withdraw his plea, but that request was denied. Culver was subsequently sentenced to eighty-eight months' imprisonment. He appealed, alleging error in the denial of his request to withdraw his guilty plea, but his conviction was affirmed by the Kansas Court of Appeals. State v. Culver, No. 90,456 (Kan. Ct. App. May 21, 2004). The Kansas Supreme Court denied his petition for review.

Culver thereafter filed a motion for post-conviction relief under Kan. Stat. Ann. § 60-1507. The motion was denied and that decision was affirmed by the Kansas Court of Appeals. Culver v. State, No. 95,296 (Kan. Ct. App. May 5, 2006). The Kansas Supreme Court denied Culver's petition for review.

Proceeding *pro se*, Culver subsequently filed this petition for federal habeas relief pursuant to 28 U.S.C. § 2254. He alleged that he was denied effective assistance of counsel, that he was denied a fair trial and that he was subjected to prosecutorial misconduct. After concluding that an evidentiary hearing was not necessary to resolve Culver's petition, the district court found his claims were without merit and denied his petition. The district court also denied Culver's motion for a certificate of appealability ("COA") and denied his request for appointed counsel. Culver seeks a COA to appeal the district court's denial of his habeas petition.

The Antiterrorism and Effective Death Penalty Act (“AEDPA”) governs this appeal. For substantially the reasons set forth in the district court’s memoranda and orders dated July 25, 2007, and August 9, 2007, we conclude that Culver has failed to make “a substantial showing of the denial of a constitutional right” and we deny his request for a COA and dismiss this appeal. 28 U.S.C. § 2253(c)(2).

ENTERED FOR THE COURT

Stephen H. Anderson
Circuit Judge