

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

February 2, 2018

Elisabeth A. Shumaker
Clerk of Court

TIMOTHY NEAL McKINLEY,

Petitioner - Appellant,

v.

TRACY McCOLLUM, Warden,

Respondent - Appellee.

No. 17-6097
(D.C. No. 5:16-CV-00126-R)
(W.D. Okla.)

ORDER DENYING CERTIFICATE OF APPEALABILITY*

Before **PHILLIPS, McKAY, and McHUGH**, Circuit Judges.

Petitioner, a pro se state prisoner, seeks a certificate of appealability to appeal the district court's denial of his § 2254 petition. 28 U.S.C. § 2253(c)(1). In his habeas petition, Petitioner raised numerous issues relating to the sufficiency of the evidence, the representation he received at trial and on appeal, and several allegedly prejudicial evidentiary determinations. The district court's twelve-page order, which adopted much of the magistrate judge's thirty-five-page second supplemental report and recommendation, considered each of the asserted issues and determined that Petitioner was not entitled to federal habeas relief on any of these grounds.

* This order is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

To obtain a certificate of appealability, Petitioner must make “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). In order to meet this burden, he must demonstrate “that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (internal quotation marks omitted).

After carefully reviewing Petitioner’s brief, the district court’s disposition, the magistrate judge’s report and recommendation, and the record on appeal, including the transcripts, rulings, and other records from the state court proceedings, we see no error in the district court’s exhaustive order, to which we have nothing to add. We accordingly conclude that reasonable jurists would not debate the district court’s denial of Petitioner’s claims. For substantially the reasons given by the district court and magistrate judge, we **DENY** Petitioner’s request for a certificate of appealability and **DISMISS** the appeal. We **GRANT** Petitioner’s motion to proceed *in forma pauperis*.

Entered for the Court

Monroe G. McKay
Circuit Judge