

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

October 11, 2006

Elisabeth A. Shumaker
Clerk of Court

JOHN L. WEEKS,

Petitioner-Appellant,

v.

DAVID R. McKUNE and PHILL
KLINE,

Respondents-Appellees.

No. 06-3228

District of Kansas

(D.C. No. 05-CV-3322-JTM)

ORDER*

Before **MURPHY, SEYMOUR, and McCONNELL**, Circuit Judges.

John L. Weeks, a state prisoner proceeding *pro se*, seeks a certificate of appealability (COA) that would allow him to appeal the district court's order denying his habeas corpus petition under 28 U.S.C. § 2254. *See* 28 U.S.C. § 2253(c)(1)(A). Because we conclude that Mr. Weeks has failed to make "a substantial showing of the denial of a constitutional right," we **DENY** his request for a COA and dismiss the appeal. 28 U.S.C. § 2253(c)(2).

*This order is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.

Mr. Weeks was convicted in Kansas state court of kidnaping, rape, and criminal sodomy of three women in three separate incidents. The Kansas Court of Appeals affirmed the convictions, but vacated an upward departure under the state sentencing guidelines. The Kansas Supreme Court denied review. After unsuccessfully pursuing state habeas relief, culminating in a denial of review by the Kansas Supreme Court on June 5, 2005, Mr. Weeks filed this petition in July 2005.

Mr. Weeks raised three issues: (1) that exclusion of alibi evidence for failure to comply with state procedural notice rules violated his right to present a defense under the Sixth and Fourteenth Amendments; (2) that the evidence was insufficient to show that he had accomplished the kidnapings by means of force, threat, or deception; and (3) that he had received ineffective assistance of counsel. One of his claims of ineffective assistance, which was also brought as an independent claim and addressed by the district court as such, see Memorandum & Order, at 15, was based on prosecutorial misconduct and defense counsel's failure to object to it.

We have carefully examined Mr. Weeks's Application for a Certificate of Appealability, the Memorandum and Order of the district court, and the record, and conclude, for substantially the reasons stated by the district court, that no reasonable jurist could find that Mr. Weeks has satisfied the criteria for a COA.

Accordingly, we **DENY** John L. Weeks' request for a COA and **DISMISS** this appeal. Petitioner's motion to proceed *in forma pauperis* is also **DENIED**.

Entered for the Court,

Michael W. McConnell
Circuit Judge