

FILED

United States Court of Appeals  
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

September 16, 2021

Christopher M. Wolpert  
Clerk of Court

RICKEY WHITE,  
  
Petitioner - Appellant,

v.

JIM FARRIS, Warden,  
  
Respondent - Appellee.

No. 21-7028  
(D.C. No. 6:21-CV-00076-JFH-KEW)  
(E.D. Okla.)

**ORDER**

Before **BACHARACH, MURPHY, and CARSON**, Circuit Judges.

This case involves an appeal from the denial of habeas relief. The petitioner sought habeas relief, complaining of prison conditions and the refusal to transfer him to a Canadian prison. On appeal, however, he abandons the claims asserted in district court and challenges his underlying conviction in state court. To pursue the appeal, the petitioner needs a certificate of appealability. We can grant a certificate only upon the presentation of a reasonably debatable appeal point. *Laurson v. Leyba*, 507 F.3d 1230, 1232 (10th Cir. 2007). We decline to issue a certificate of appealability. With no certificate, we dismiss the matter.

The petitioner’s appellate arguments are not reasonably debatable because he has waived the underlying claims. He did not present any of

these claims in his habeas petition. So the district court never had an opportunity to consider these claims. Because these claims did not appear in the habeas petition, we consider these claims “waived.” *Owens v. Trammell*, 792 F.3d 1234, 1246 (10th Cir. 2015). Because these claims are waived, they cannot be considered “reasonably debatable” in an appeal. *See Childers v. Crow*, 1 F.4th 792, 799–800 (10th Cir. 2021) (stating that because the underlying habeas claim had been omitted in the habeas petition, a certificate of appealability should not have been granted).<sup>1</sup>

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With no reasonably debatable appeal point, we

- decline to issue a certificate of appealability and
- dismiss this matter.<sup>2</sup>

Entered for the Court

Robert E. Bacharach  
Circuit Judge

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<sup>1</sup> Because the petitioner did not challenge the conviction in district court, the record on appeal contains no information about his criminal proceedings or any state-court appeals. We thus have no information to guide us in considering the petitioner’s newly presented claims.

<sup>2</sup> We grant Mr. White’s request for leave to proceed in forma pauperis.