

F I L E D
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

November 13, 2006

TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

NELSON R. LYNCH,

Petitioner - Appellant,

v.

JUSTIN JONES,

Respondent - Appellee.

No. 06-6255

(W. D. Oklahoma)

(D.C. No. 06-CV-00099-HE)

ORDER DENYING CERTIFICATE OF APPEALABILITY*

Before **TACHA**, Chief Circuit Judge, **HARTZ**, and **TYMKOVICH**, Circuit Judges.

On January 30, 2006, Nelson R. Lynch filed in the United States District Court for the Western District of Oklahoma an application for relief under 28 U.S.C. § 2254 challenging his Oklahoma state conviction of possession of cocaine with intent to distribute. He contended that (1) the cocaine was obtained in an unlawful search of his vehicle, (2) his trial attorney was ineffective for

*After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist 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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

failing to challenge the legality of the search, (3) his attorney for his state appeal was ineffective for failing to challenge his trial counsel's effectiveness, and (4) his sentence was unlawful. The district court denied the § 2254 application, adopting in its entirety the Report and Recommendation by the magistrate judge.

Mr. Lynch then filed a notice of appeal. The district court issued no ruling regarding whether Mr. Lynch is entitled to a certificate of appealability (COA) to pursue his appeal. *See* 28 U.S.C. § 2253(c) (requiring COA). We therefore deem that it denied a COA. *United States v. Kennedy*, 225 F.3d 1187, 1193 n.3 (10th Cir. 2000). Mr. Lynch now seeks a COA from this court. To be entitled to a COA he must "ma[k]e a substantial showing of the denial of a constitutional right." § 2253(c)(2). We will grant a COA only if reasonable jurists could debate the district court's ruling. *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

The Report and Recommendation thoroughly explored Mr. Lynch's claims. In particular, it explained that the vehicle search was clearly lawful, thereby undermining all of Mr. Lynch's claims other than the challenge to his sentence. No reasonable jurist could debate the correctness of the analysis in the Report and Recommendation.

We therefore DENY a COA and DISMISS this appeal. We also DENY

Mr. Lynch's motion for leave to proceed *in forma pauperis*.

ENTERED FOR THE COURT

Harris L Hartz
Circuit Judge