

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

FILED
United States Court of Appeals
Tenth Circuit

August 20, 2010

Elisabeth A. Shumaker
Clerk of Court

JERRY DON FLIPPO,

Petitioner-Appellant,

v.

JUSTIN JONES, Director,

Respondent-Appellee.

No. 10-6081
(D.C. No. 5:09-CV-01240-C)
(D. W.D. Okla.)

ORDER DENYING CERTIFICATE OF APPEALABILITY*

Before **KELLY, EBEL** and **LUCERO**, Circuit Judges.

Jerry Flippo, a pro se litigant, filed a petition under 28 U.S.C. § 2254 seeking relief from his Oklahoma convictions for attempted grand larceny and false personation. Magistrate Judge Gary Purcell issued a thorough analysis recommending Mr. Flippo's petition be denied, and the district court adopted that recommendation in its entirety. The district court also denied Mr. Flippo's requests to receive a certificate of appealability ("COA") and to proceed in forma pauperis ("IFP"). Mr. Flippo now renews these

* This order is not binding precedent except under the doctrines of law of the case, res judicata and collateral estoppel.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

requests. For the reasons that follow, we DENY his request for a COA, but we GRANT his request to proceed IFP.

We will grant a COA “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). “To meet this standard, a petitioner must demonstrate that jurists of reason could disagree with the district court’s resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.” Boutwell v. Keating, 399 F.3d 1203, 1211 (10th Cir. 2005) (quotation omitted). In this case, we do not think reasonable jurists could disagree with the thorough analysis of the magistrate judge, nor do we think his claims require further analysis. Thus, we deny Mr. Flippo’s COA based on the magistrate judge’s report and recommendation as adopted by the district court.

However, unlike the district court, we do not think Mr. Flippo filed his petition in bad faith. Therefore, we grant Mr. Flippo’s request to proceed IFP.

ENTERED FOR THE COURT

David M. Ebel
Circuit Judge