

UNITED STATES COURT OF APPEALS

July 18, 2011

TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

ROBERT LEE PEACE,

Petitioner-Appellant,

v.

JUSTIN JONES, Director, Oklahoma
Department of Corrections,

Respondent-Appellee.

No. 11-5059
(D.C. No. 4:08-CV-00065-TCK-TLW)
(N.D. Okla.)

ORDER DENYING CERTIFICATE OF APPEALABILITY*

Before **LUCERO, ANDERSON, and GORSUCH**, Circuit Judges.

In 2005, an Oklahoma state court convicted Robert Lee Peace of assault and battery with a dangerous weapon. The Oklahoma Court of Criminal Appeals affirmed the conviction but reduced Mr. Peace's sentence after finding that Mr. Peace had committed only one prior felony — not two, as the trial court had thought — for sentencing purposes. After unsuccessfully seeking further relief in state post-conviction proceedings, Mr. Peace filed a petition for relief under 28

* This order is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel.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

U.S.C. § 2254 in the federal district court. The district court denied the petition, concluding that Mr. Peace’s claims lacked merit. The district court also denied Mr. Peace a certificate of appealability (“COA”) and it is Mr. Peace’s renewed request for a COA that is now before us.

We may grant a COA only if Mr. Peace makes a “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). And where, as here, the district court has dismissed a § 2254 petition on its merits, we may issue a COA only if “reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Miller-El v. Cockrell*, 537 U.S. 322, 338 (2003) (internal quotation omitted). After reviewing Mr. Peace’s submission to this court, however, we are persuaded that no reasonable jurist would debate the district court’s assessment of his claims. Accordingly, we deny Mr. Peace’s application for a COA and dismiss this appeal. Because the district court has granted Mr. Peace leave to proceed *in forma pauperis* on appeal, Mr. Peace’s motion before this court to proceed *in forma pauperis* is denied as moot.

ENTERED FOR THE COURT

Neil M. Gorsuch
Circuit Judge