

July 6, 2011

UNITED STATES COURT OF APPEALS  
TENTH CIRCUIT

Elisabeth A. Shumaker  
Clerk of Court

---

RANDALL D. SPEER,

Petitioner–Appellant,

v.

MARTY SIRMONS, Warden,

Respondent–Appellee.

No. 11-6067

(D.C. No. 5:05-CV-00691-R)

(W.D.Okla.)

---

**ORDER DENYING CERTIFICATE OF APPEALABILITY\***

---

Before **O’BRIEN, McKAY, and TYMKOVICH**, Circuit Judges.

---

Petitioner, a state prisoner proceeding pro se, seeks a certificate of appealability to appeal the district court’s denial of his “Motion to Reopen Original Habeas Petition for the Non-Adjudicated Constitutional Claims.” Petitioner’s original § 2254 habeas petition was denied by the district court in 2005, and we denied a certificate of appealability as to that denial in 2006. *See Speer v. Sirmons*, No. 05-6272 (10th Cir. Feb. 16, 2006). In his motion to reopen, Petitioner argued there were numerous constitutional violations in his trial and

---

\* This order is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel.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

the federal courts had erroneously failed to consider his habeas claims on the merits based on incorrect procedural rulings. The district court concluded, to the extent it had authority to treat Petitioner's motion to reopen as a Rule 60(b) motion for relief from the judgment, that the motion should be denied as untimely and without merit.

After thoroughly reviewing the record and Petitioner's filings on appeal, we conclude that reasonable jurists would not debate whether Petitioner's claims stated a valid basis for Rule 60(b) relief. *See Spitznas v. Boone*, 464 F.3d 1213, 1216 (10th Cir. 2006). For substantially the same reasons given by the district court, we **DENY** Petitioner's request for a certificate of appealability and **DISMISS** the appeal. We **GRANT** Petitioner's motion for leave to proceed *in forma pauperis*.

ENTERED FOR THE COURT

Monroe G. McKay  
Circuit Judge