

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

November 4, 2014
Elisabeth A. Shumaker
Clerk of Court

JAMES SIDNEY TRIGGS,

Petitioner - Appellant,

v.

THE STATE OF COLORADO; LOU
ARCHULETA, Warden, Fremont
Correctional Facility; JOHN
SUTHERS, The Attorney General of
the State of Colorado,

Respondents - Appellees.

No. 14-1213
(D. Colorado)
(D.C. No. 1:13-CV-03292-REB)

**ORDER DENYING CERTIFICATE
OF APPEALABILITY**

Before **GORSUCH, MURPHY, and HOLMES**, Circuit Judges.

This matter is before the court on James Triggs's pro se requests for a certificate of appealability ("COA") and to proceed on appeal *in forma pauperis*. Triggs seeks a COA so he can appeal the district court's denial of his 28 U.S.C. § 2254 petition. 28 U.S.C. § 2253(c)(1)(A). We **grant** Triggs's request to proceed on appeal *in forma pauperis*. Because Triggs has not, however, "made a substantial showing of the denial of a constitutional right," *id.* § 2253(c)(2), this court **denies** his request for a COA and **dismisses** this appeal.

A Colorado state jury convicted Triggs on multiple counts of sexually assaulting his children. The trial court imposed a lengthy sentence of imprisonment. His convictions and sentence were affirmed, in an unpublished decision, on direct appeal to the Colorado Court of Appeals; the Colorado Supreme Court denied certiorari review. After the Colorado state courts denied Triggs's request for post-conviction relief, Colo. R. Crim. P. 35(c), Triggs filed the instant § 2254 petition raising twelve overarching challenges to his state convictions. In two thorough and well-stated orders, the district court concluded as follows: **(1)** the overwhelming majority of claims set out in Triggs's petition were procedurally barred (i.e., 1(b), the portion of claim 2 relating to Triggs's eldest son, 3, all portions of claim 4 except 4(b)(ii),¹ 5, 6, 7, 9(b), 9(c), the assertion of cumulative error in claim 9, 10, and 11); **(2)** claim 9(a) was so vaguely pled that it was subject to summary dismissal under Rule 4 of the Rules Governing Section 2254 Cases, *Blackledge v. Allison*, 431 U.S. 63, 75 n.7 (1977); **(3)** the Colorado Court of Appeals' factual and legal resolution of the remaining claims (i.e., 1(a), 2, 4(b)(ii), 8, and 12) was reasonable, 28 U.S.C. § 2254(d).

The granting of a COA is a jurisdictional prerequisite to Triggs's appeal from the denial of his § 2254 petition. *Miller-El v. Cockrell*, 537 U.S. 322, 336

¹The district court determined the allegations of ineffective assistance of counsel set out in claim 4 were procedurally barred only after ordering further briefing and concluding none of the claims were sufficiently substantial to implicate the special procedural default rule set out in *Martinez v. Ryan*, 132 S. Ct. 1309 (2012).

(2003). To be entitled to a COA, Triggs must make “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). To make the requisite showing, he must demonstrate “reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.” *Miller-El*, 537 U.S. at 336 (quotations omitted). In evaluating whether Triggs has satisfied his burden, this court undertakes “a preliminary, though not definitive, consideration of the [legal] framework” applicable to each of his claims. *Id.* at 338. Although Triggs need not demonstrate his appeal will succeed to be entitled to a COA, he must “prove something more than the absence of frivolity or the existence of mere good faith.” *Id.*

Having undertaken a review of Triggs’s appellate filings, the district court’s orders dated March 3, 2014 and May 19, 2014, and the entire record before this court, we conclude Triggs is not entitled to a COA. In so concluding, this court has nothing to add to the comprehensive analysis set out by district court. Accordingly, this court **DENIES** Triggs’s request for a COA and **DISMISSES** this appeal.

ENTERED FOR THE COURT

Michael R. Murphy
Circuit Judge