

UNITED STATES COURT OF APPEALS August 1, 2018

TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

ROMON LAMONT DOBBINS,

Petitioner - Appellant,

v.

JOE M. ALLBAUGH,

Respondent - Appellee.

No. 18-6055
(D.C. No. 5:17-CV-00521-M)
(W.D. Okla.)

**ORDER DENYING CERTIFICATE
OF APPEALABILITY**

Before **BACHARACH, MURPHY, and MORITZ**, Circuit Judges.

Appellant, Romon Lamont Dobbins, an Oklahoma state prisoner proceeding *pro se* and *in forma pauperis*, seeks a certificate of appealability (“COA”) from this court so he can appeal the district court’s denial of his 28 U.S.C. § 2254 habeas petition. *See* 28 U.S.C. § 2253(c)(1)(A) (providing no appeal may be taken from a final order disposing of a § 2254 petition unless the petitioner first obtains a COA). In 2014, Dobbins was convicted in Oklahoma state court of drug trafficking and possession of a controlled dangerous substance with intent to distribute. His convictions were affirmed by the Oklahoma Court of Criminal Appeals (“OCCA”) on February 8, 2016. His state application for post-conviction

relief was denied by the state trial court and the denial was affirmed by the OCCA.

Dobbins filed the instant § 2254 federal habeas petition on February 7, 2018, raising the following two claims: (1) ineffective assistance of trial counsel for failing to challenge the sufficiency of the affidavit supporting the search warrant that led to his arrest and (2) ineffective assistance of appellate counsel for failing to argue trial counsel's ineffective assistance. Dobbins's petition was referred to a magistrate judge who prepared a written Report and Recommendation (R&R). The R&R reviewed Dobbins's ineffective assistance claims de novo based on its conclusion the OCCA had not fully addressed them because Dobbins modified his arguments on appeal. *See* 28 U.S.C. § 2254(b)(2) (providing federal court can deny unexhausted habeas claims on the merits). The R&R recommended denying relief on the claims, concluding Dobbins had not met his burden under *Strickland v. Washington*, 466 U.S. 668 (1984). After considering Dobbins's written objections to the R&R, the district court adopted the findings and conclusions in the R&R and denied Dobbins's habeas petition.

To be entitled to a COA, Dobbins 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 "that 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 v. Cockrell*, 537 U.S. 322, 336 (2003) (quotations omitted). In evaluating whether Dobbins 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 Dobbins 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.* (quotations omitted).

This court has reviewed Dobbins’s application for a COA and appellate brief,¹ the R&R, the district court’s order, and the entire record on appeal pursuant to the framework set out by the Supreme Court in *Miller-El* and concludes that Dobbins is not entitled to a COA. The district court’s resolution of Dobbins’s claims is not reasonably subject to debate and the claims are not adequate to deserve further proceedings.

¹In his appellate brief, Dobbins raises an additional claim that was not included in his § 2254 petition, challenging the sufficiency of the evidence presented at trial. This court does not consider issues raised for the first time on appeal. *Rhine v. Boone*, 182 F.3d 1153, 1154 (10th Cir. 1999).

Because Dobbins has not “made a substantial showing of the denial of a constitutional right,” he is not entitled to a COA. 28 U.S.C. § 2253(c)(2). This court **denies** Dobbins’s request for a COA and **dismisses** this appeal.

ENTERED FOR THE COURT

Michael R. Murphy
Circuit Judge