

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

November 12, 2021

Christopher M. Wolpert
Clerk of Court

JOHN REGINALD POWELL,

Petitioner - Appellant,

v.

JIM FARRIS, Warden,

Respondent - Appellee.

No. 21-6089
(D.C. No. 5:21-CV-00315-C)
(W.D. Okla.)

ORDER DENYING CERTIFICATE OF APPEALABILITY*

Before **HARTZ, PHILLIPS**, and **CARSON**, Circuit Judges.

John Reginald Powell, an Oklahoma state prisoner proceeding pro se, seeks a certificate of appealability (COA) to appeal from the district court’s order dismissing his 28 U.S.C. § 2254 habeas petition for lack of jurisdiction. He also seeks leave to proceed in forma pauperis (IFP) on appeal. We deny a COA, deny IFP, and dismiss this matter.

Mr. Powell was convicted of first-degree murder and sentenced to life imprisonment. He did not file a direct appeal. He filed his first § 2254 petition in 1996, which the district court denied on the merits. He did not appeal from that decision.

Mr. Powell then filed the § 2254 petition at issue here in March 2021, asserting some new

* This order is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel.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

claims and reasserting some of the claims he raised in his first petition. The district court concluded that the petition was an unauthorized second or successive § 2254 petition and dismissed it for lack of jurisdiction. It also denied his motion to proceed IFP on appeal.

To appeal the district court's order, Mr. Powell must obtain a COA. *See* 28 U.S.C. § 2253(c)(1)(A); *Slack v. McDaniel*, 529 U.S. 473, 482 (2000). To obtain a COA, he must show *both* “that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack*, 529 U.S. at 484. We need not reach the constitutional component of this standard since it is apparent Mr. Powell cannot meet his burden on the procedural one. *See id.* at 485.

A prisoner may not file a second or successive § 2254 petition unless he first obtains an order from the circuit court authorizing the district court to consider the petition. 28 U.S.C. § 2244(b)(3)(A). Absent such authorization, a district court lacks jurisdiction to address the merits of a second or successive § 2254 petition. *In re Cline*, 531 F.3d 1249, 1251 (10th Cir. 2008) (*per curiam*).

In his COA application to this court, Mr. Powell raises three claims of error:

- 1) “the district court[’s] procedural ruling was incorrect because there was some important issue [that] was raise[d],” namely, “that the sentencing judge did not allow Petitioner to withdraw his guilty plea” due to his “actual innocence,” COA Appl. at 5;
- 2) “[t]he district court rejected . . . Petitioner[’s] constitutional underlying claim” by failing to “grant a psychiatric examination and a competency hearing before exposing the sentence,” *id.* at 6; and
- 3) “the district court . . . failed to consider that Petitioner was

incompeten[t],” and reasonable jurists could debate whether the failure to conduct a psychiatric examination violated his Sixth Amendment rights, *id.* But these arguments go to the merits of his underlying claims, and do not address how the district court erred in finding his § 2254 petition to be an unauthorized second or successive petition over which it lacked jurisdiction.

Even reviewing Mr. Powell’s application with the liberality due pro se applicants, *see Garza v. Davis*, 596 F.3d 1198, 1201 n.2 (10th Cir. 2010), he has not shown that jurists of reason would debate whether the district court’s procedural ruling was correct. Therefore, we deny a COA and dismiss this appeal. We also deny his motion to proceed IFP.

Entered for the Court

A handwritten signature in black ink, appearing to read 'C. M. Wolpert', with a long horizontal stroke extending to the right.

CHRISTOPHER M. WOLPERT, Clerk