

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

August 8, 2023

FOR THE TENTH CIRCUIT

Christopher M. Wolpert
Clerk of Court

BRIAN MAURICE LINDSEY,

Petitioner - Appellant,

v.

STEVEN HARPE,

Respondent - Appellee.

No. 23-5053
(D.C. No. 4:22-CV-00233-CVE-SH)
(N.D. Okla.)

ORDER DENYING CERTIFICATE OF APPEALABILITY*

Before **PHILLIPS, BALDOCK, and ROSSMAN**, Circuit Judges.

Petitioner Brian Maurice Lindsey informs us he is an “American Indian” who pleaded guilty in Oklahoma state court on May 30, 2017, to being a felon in possession of a firearm and feloniously pointing a firearm, each in violation of Oklahoma law. He is currently serving his sentence of imprisonment at the Davis Correctional Facility in Holdenville, Oklahoma. Appearing pro se, Petitioner now moves this Court for a Certificate of Appealability (COA) so that he may appeal the district court’s dismissal of his Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2254 as untimely. *See* 28 U.S.C. § 2253(c)(1)(A). To obtain a COA, Petitioner must “show[], at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of

* This order is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel.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

a constitutional right *and* that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (emphasis added). If reasonable jurists would not debate the district court’s procedural ruling, we need not address the constitutional issue. *Id.* Applying this standard, we deny Petitioner’s application for a COA and dismiss his appeal.

In his § 2254 petition and present application for a COA (combined with his appellate brief), Petitioner relies on the Supreme Court’s decision in *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020), to argue (1) the Oklahoma state court in which he was convicted lacked jurisdiction to prosecute him because his crimes occurred in “Indian Country,” and (2) he received ineffective assistance of trial counsel based on his counsel’s failure to raise the jurisdictional bar recognized in *McGirt*. The substance of Petitioner’s argument has two parts: First, the state court lacked subject-matter jurisdiction over his prosecution (and related ineffective assistance of counsel claim) and second, such jurisdictional claim is not subject to the Antiterrorism and Effective Death Penalty Act’s (AEDPA) one-year statute of limitations. *See* 28 U.S.C. §2244(d)(1)(A)–(D). Rather, according to Petitioner, his jurisdictional claim may be raised at any time after conviction. As the district court explained, however, Petitioner’s argument, as well as the other related arguments he raised before it, are foreclosed by Tenth Circuit precedent. *See Pacheco v. Habti*, 62 F.4th 1233, 1244–45 (10th Cir. 2023) (holding petitioner’s *McGirt* claim barred by AEDPA’s statute of limitations); *see also e.g., Ford v. Dowling*, 2023 WL 2641476, at **1–3 (10th Cir. 2023) (unpublished).

We DENY Petitioner’s application for a COA substantially for the reasons stated in the district court’s Opinion and Order granting Respondent’s motion to dismiss and denying his initial application for a COA. *Lindsey v. Harpe*, 2023 WL 3066118, at **1–3 (N.D. Okla. 2023) (unpublished). The district court previously granted Petitioner’s motion to proceed *in forma pauperis* on appeal.

APPEAL DISMISSED.

Entered for the Court

Bobby R. Baldock
Circuit Judge