

**IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF OKLAHOMA**

|                                |   |                                    |
|--------------------------------|---|------------------------------------|
| <b>RICHARD SCOTT McINTOSH,</b> | ) |                                    |
|                                | ) |                                    |
| Petitioner,                    | ) |                                    |
|                                | ) |                                    |
| v.                             | ) | <b>Case No. CIV 16-460-RAW-KEW</b> |
|                                | ) |                                    |
| <b>E. SCOTT PRUITT,</b>        | ) |                                    |
|                                | ) |                                    |
| Respondent.                    | ) |                                    |

**OPINION AND ORDER**  
**DENYING CERTIFICATE OF APPEALABILITY**

On August 21, 2017, Petitioner’s petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 was dismissed as barred by the statute of limitations, and judgment was entered (Dkts. 15, 16). He did not appeal that decision. On February 18, 2020, however, he filed a motion pursuant to Fed. R. Civ. P. 60(b), or as an independent action pursuant to Fed. R. Civ. P. 60(d)(1) (Dkt. 17 at 1).

On August 6, 2020, Petitioner’s Rule 60(b) motion was denied as untimely, and his request pursuant to Rule 60(d)(1) was denied for his failure to make the necessary showing for relief under that statute (Dkt. 19). The Court did not address whether a certificate of appealability (COA) should issue, *id.*, and Petitioner did not request a COA. Therefore, on August 27, 2020, the Tenth Circuit Court of Appeals issued a limited remand for consideration of whether to issue a COA with respect to the denial of Petitioner’s motion. *McIntosh v. Pruitt*, No. 20-7054 (10th Cir. Aug. 27, 2020) (Dkt. 25).

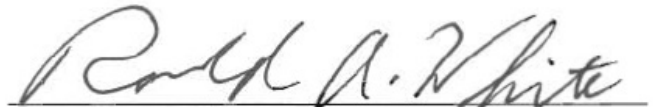
After careful review, the Court finds Petitioner has failed to make a “substantial

showing of the denial of a constitutional right,” as required by 28 U.S.C. § 2253(c)(2). He also has not shown “at least, that jurists of reason would find it debatable whether [Petitioner] states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether [this] court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Therefore, a COA cannot be issued.

**ACCORDINGLY,**

1. Petitioner is DENIED a certificate of appealability.
2. The Court Clerk is directed to transmit a copy of this Opinion and Order to the Tenth Circuit Court of Appeals, pursuant to the August 27, 2020, Order in Case No. 20-7054 (Dkt. 25).

**IT IS SO ORDERED** this 2nd day of September 2020.

  
Ronald A. White  
United States District Judge  
Eastern District of Oklahoma