

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

MAY 31 2002

PATRICK FISHER
Clerk

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JULIUS BAHE,

Defendant - Appellant.

No. 01-4161

(D.C. Nos. 2:01-CV-238-J,
2:92-CR-323-J)

(D. Utah)

ORDER AND JUDGMENT*

Before **KELLY, McKAY, and MURPHY**, Circuit Judges.

After examining the briefs and the appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

This is a pro se § 2255 prisoner appeal. Mr. Bahe pled guilty to drug charges and was sentenced to 24 months imprisonment to be served consecutive to a Utah state court sentence. Mr. Bahe's § 2255 motion claimed that his

*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

sentence should have been concurrent with, rather than consecutive to, his state sentence. Finding no merit in any of Mr. Bahe's arguments, the district court denied the § 2255 motion on the merits. Appellant then applied to this court for a certificate of appealability.

In order for this court to grant a certificate of appealability, Appellant must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To do so, Appellant 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." Slack v. McDaniel, 529 U.S. 473, 484 (2000) (quotations omitted).

Mr. Bahe argues that the district judge believed that Mr. Bahe would only serve one year in state prison and that is why the judge ordered a consecutive sentence. So far, Mr. Bahe has served six years in state prison. However, there is nothing in the record to indicate that the district judge based his decision on a one-year sentence in state prison. We have carefully reviewed Mr. Bahe's and the Government's briefs, the district court's disposition, and the record on appeal. Nothing in the facts, the record on appeal, or the briefs raises an issue which meets our standards for the grant of a certificate of appealability. We find no merit in Mr. Bahe's contention. We cannot say that "reasonable jurists could

debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner.” Id. We **DENY** Appellant’s request for a certificate of appealability and **DISMISS** the appeal.

Entered for the Court

Monroe G. McKay
Circuit Judge