

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

MAR 8 2002

PATRICK FISHER
Clerk

DAN HENRY TIJERINA,

Petitioner-Appellant,

v.

UTAH STATE BOARD OF
PARDONS; PAUL SHEFFIELD;
GERALD COOK, Warden,

Respondents-Appellees.

No. 01-4221

(D.C. No. 01-CV-556-S)

(D. Utah)

ORDER AND JUDGMENT*

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

After examining Petitioner's brief 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.

State prisoner Dan Henry Tijerina, proceeding pro se, seeks to appeal the dismissal of his 28 U.S.C. § 2254 habeas corpus petition. In his habeas petition,

*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

Mr. Tijerina claimed that the Utah State Parole Board breached his plea agreement and that it failed to provide due process at parole hearings that took place in either November 1987 or November 1988. The district court dismissed the petition as untimely under AEDPA. Petitioner now seeks a certificate of appealability.

In order for this court to grant a certificate of appealability, Petitioner must make a “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). To do so, Petitioner 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).

After a careful review of the petition, the district court’s opinion, and the relevant record, we conclude that for substantially the same reasons as those given by the district court Petitioner does not present a debatable question for reasonable jurists.

Thus, we **DENY** Petitioner a certificate of appealability and **DISMISS** the case.

Entered for the Court

Monroe G. McKay
Circuit Judge