

**UNITED STATES COURT OF APPEALS**  
**TENTH CIRCUIT**

**JAN 24 2002**

**PATRICK FISHER**  
Clerk

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BILLY RAY WHITE,

Petitioner - Appellant,

v.

RON WARD,

Respondent - Appellee.

No. 01-5064  
(D.C. No. 97-CV-706-H)  
(N.D. Okla.)

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**ORDER AND JUDGMENT\***

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Before **EBEL, KELLY, and LUCERO**, Circuit Judges.\*\*

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Billy Ray White, an inmate appearing pro se, seeks to appeal from the denial of his habeas petition, 28 U.S.C. § 2254. Because Mr. White has failed to make “a substantial showing of the denial of a constitutional right,” 28 U.S.C. § 2253(c)(2), we deny his application for a certificate of appealability (“COA”) and dismiss the appeal. Slack v. McDaniel, 529 U.S. 473, 483 (2000).

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\* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

\*\* After examining the briefs and the appellate record, this three-judge panel has determined unanimously that oral argument would not be of material assistance in the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1(G). The cause is therefore ordered submitted without oral argument.

Mr. White was convicted of first degree manslaughter in state district court, and sentenced to life imprisonment in accordance with the jury's recommendation. See Okla. Stat. Ann. § tit. 21, § 711(3) (1991). Mr. White represented himself at trial, standby counsel only rendered procedural guidance. R. Doc. 9 at 462. Mr. White's conviction and sentence were affirmed by the Oklahoma Court of Criminal Appeals (OCCA) in a summary opinion on direct appeal. R. Doc. 7, Ex. A. His federal habeas petition was referred to a magistrate judge who recommended that the petition be denied. The district court adopted the magistrate's report and recommendation, denying the petition and entering judgment for the respondent. We deny a COA for substantially the same reasons contained in the report and recommendation. R. Doc. 22.

On appeal, Mr. White raises the same claims raised before the OCCA, and in his federal habeas petition. In addition he claims that he is actually innocent because he acted in self defense (he perpetrated the death of the victim necessarily), relying upon cases involving exceptions to procedural bar. Aplt. Br. at 35-36 (citing, for example, Murray v. Carrier , 477 U.S. 478, 496 (1986)). This claim was not raised below so it is waived; regardless, none of Mr. White's claims in his federal habeas petition were rejected on grounds of procedural bar. R. Doc. 22 at 3. Moreover, any claim for relief based upon actual innocence must be linked to a constitutional violation, LaFevers v. Gibson , 238 F.3d 1263, 1265

n.4 (10th Cir. 2001), and we have found none.

Entered for the Court

Paul J. Kelly, Jr.  
Circuit Judge