

UNITED STATES COURT OF APPEALS

FEB 8 2002

TENTH CIRCUIT

PATRICK FISHER
Clerk

ROBERT DEWAINÉ HUNNICUTT,

Petitioner - Appellant,

v.

JAMES SAFFLE, Director, Oklahoma
Department of Corrections,

Respondent - Appellee.

No. 01-6297
(D. C. No. 01-CV-489-C)
(W.D. Okla.)

ORDER AND JUDGMENT*

Before **TACHA**, Chief Judge, **EBEL**, and **LUCERO**, Circuit Judges.

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)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

Petitioner Hunnicutt seeks to appeal *pro se* from an order of the district court dismissing his appeal as time barred pursuant to the provisions of 28 U.S.C. § 2244(d).

*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

Petitioner seeks a certificate of appealability (COA) to pursue his appeal of the district court's denial of his petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254. Determining that Mr. Hunnicutt has not met the statutory requirements, we deny his application and dismiss the appeal.

To be entitled to a COA, Mr. Hunnicutt must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). He can make this showing by establishing 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) (quotation omitted).

We may grant habeas relief only if the state court entered a judgment that

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

28 U.S.C. § 2254(d).

After a review of the record and the docket sheet demonstrating the filings and deadlines applicable to petitioner's case, we conclude that the issue of whether petitioner timely filed his action pursuant to 28 U.S.C. § 2254 is not one about which reasonable jurists could debate whether the petition should have been resolved in a different manner. For this reason, we deny a certificate of appealability and dismiss the appeal. Petitioner

has moved to proceed *in forma pauperis*. That motion is granted.

ENTERED FOR THE COURT,

Deanell Reece Tacha
Chief Circuit Judge