

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

DEC 23 2002

PATRICK FISHER
Clerk

CALVIN DEAN PETERS,

Petitioner-Appellant,

v.

ATTORNEY GENERAL FOR THE
STATE OF NEW MEXICO; TIM
LEMASTER, Warden, New Mexico
State Penitentiary,

Respondents-Appellees.

No. 02-2013
(D.C. No. CIV-01-114-MV/RLP)
(D. N.M.)

ORDER AND JUDGMENT *

Before **SEYMOUR** , **EBEL** , and **O'BRIEN** , Circuit Judges.

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* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

Petitioner-appellant Calvin Dean Peters appeals from the district court's order dismissing his 28 U.S.C. § 2254 habeas corpus petition and denying his requests for appointment of counsel and request for continuance. The district court dismissed the petition because it concluded that Peters had failed to file within the one-year statute of limitations. *See* 28 U.S.C. § 2244(d).

Peters seeks a certificate of appealability (COA) to appeal from the order of dismissal. *See id.* § 2253(c)(1)(A). In order to receive a COA on a procedural issue, he must show both “that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Peters has filed an extensive array of materials in support of his request for COA. He seeks to raise the following issues concerning the district court's procedural rulings: (1) the district court's failure to appoint counsel for him deprived him of the opportunity to adequately brief the issues raised in his petition; (2) he should have received an evidentiary hearing; (3) the district court should have granted his request for continuance; (4) the “mailbox rule” applies, making his petition timely; (5) the state waived the opportunity to argue the untimeliness of his petition; (6) he did not receive an adequate notice and opportunity to be heard before the district court dismissed his petition; (7) the time limit should have been

equitably tolled; (8) the New Mexico state prison law library was inadequate to allow him to fully investigate and present his claims and/or he was denied access to legal materials; (9) his claims are timely under the “discovery rule” of 28 U.S.C. § 2244(d)(1)(D); and (10) his petition for certiorari to the New Mexico Supreme Court was timely. In addition, he raises a number of issues pertaining to whether his underlying petition states a claim for the violation of a constitutional right.

Upon careful consideration of the material submitted by Peters, the record on appeal and the applicable law under the above-referenced standards, we have determined that Peters is not entitled to a COA. We therefore DENY COA and DISMISS this appeal. Peters’ motion for appointment of counsel on appeal is DENIED.

Entered for the Court

Terrence L. O’Brien
Circuit Judge