

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

MAY 31 2002

PATRICK FISHER
Clerk

IRVIN TIMLEY,

Petitioner - Appellant,

v.

MICHAEL A. NELSON and
ATTORNEY GENERAL OF
KANSAS,

Respondents - Appellees.

No. 02-3021

(D.C. No. 01-CV-3359-DES)

(D. Kansas)

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 § 2254 prisoner appeal. Mr. Timley was convicted of three counts of rape and four counts of aggravated criminal sodomy. His convictions

*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

were affirmed on direct appeal. Mr. Timley's three state post-conviction actions and appeals were unsuccessful.

In his § 2254 petition, Mr. Timley raised ten claims of error. The magistrate judge recommended that the petition be denied as untimely under AEDPA. After consideration of Mr. Timley's objections, the district court adopted the recommendation, finding no grounds for equitable tolling, and denied the petition. Finding no merit in any of Mr. Timley's arguments, the district court declined to grant him a certificate of appealability. Petitioner then applied to this court for 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).

We have carefully reviewed Mr. Timley's brief, the district court's disposition, and the record on appeal. Nothing in the facts, the record on appeal, or Appellant's brief raises an issue which meets our standards for the grant of a certificate of appealability. For substantially the same reasons as set forth by the

district court in its Order of December 20, 2001, adopting the magistrate judge's report and recommendation, 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** Petitioner's request for a certificate of appealability and **DISMISS** the appeal.

Entered for the Court

Monroe G. McKay
Circuit Judge