

**UNITED STATES COURT OF APPEALS**

**SEP 3 2002**

**TENTH CIRCUIT**

**PATRICK FISHER**  
Clerk

CARL STANLEY ATKINSON,  
Petitioner-Appellant,

v.

DAVID McKUNE,  
Respondent-Appellee.

No. 02-3134

(D.C. No. 00-CV-3106)

(D. Kansas)

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**ORDER AND JUDGMENT\***

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

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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. Atkinson was convicted of aggravated burglary, theft, kidnaping, obstruction of legal process, and aggravated battery against a law enforcement officer. He was sentenced to 130

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\*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

months' imprisonment. His conviction and sentence were affirmed on direct appeal, and the state supreme court denied further review. In his federal habeas petition, Mr. Atkinson claimed due process violation, failure to give jury instruction on the reliability of eyewitness testimony, and failure to give lesser included offense instruction of criminal restraint on the kidnapping charge. The district court denied the petition on the merits and 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. Atkinson's brief, the district court's disposition, and the record on appeal. Nothing in the facts, the record on appeal, or Petitioner'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 April 4, 2002, 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