

UNITED STATES COURT OF APPEALS

DEC 19 2002

TENTH CIRCUIT

PATRICK FISHER
Clerk

CONRAD J. BRAUN,

Petitioner-Appellant,

v.

STATE OF KANSAS,

Respondent-Appellee.

No. 02-3258

(D.C. No. 02-CV-3048-DES)

(D. Kansas)

ORDER AND JUDGMENT*

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

After examining Petitioner's brief 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 28 U.S.C. § 2254 prisoner appeal. In his habeas petition, Mr. Braun sought relief from alleged constitutional errors in four state court convictions for which he had fully served the sentences imposed. The magistrate

*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

judge recommended that Petitioner be denied federal habeas relief since he was no longer in custody pursuant to a state court judgment. After consideration of Petitioner's objections, the district court dismissed the petition for lack of subject matter jurisdiction. Although Petitioner originally characterized his pleading as a petition for a writ of habeas corpus, he titled his amended filing a petition for a writ of coram nobis. The district court concluded that it lacked jurisdiction regardless of how the petition and amended petition were construed.

Finding no merit in any of Mr. Braun'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. Braun'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 July 8, 2002, 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