

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

MAR 3 2003

PATRICK FISHER
Clerk

ROY DALE BANKS,

Petitioner - Appellant,

v.

MICHAEL A. NELSON; THE
ATTORNEY GENERAL OF THE
STATE OF KANSAS,

Respondents - Appellees.

No. 02-3391
(D.C. No. 00-CV-3238-DES)
(D. Kansas)

ORDER AND JUDGMENT*

Before **KELLY, BRISCOE**, and **LUCERO**, 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*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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 Roy Banks, a state prisoner appearing pro se, seeks a certificate of appealability (COA) to appeal the district court's denial of his 28 U.S.C. § 2254 habeas petition. Because we conclude that Banks has failed to make a "substantial showing of the denial of a constitutional right," 28 U.S.C. § 2253(c), we deny his request for a COA and dismiss the appeal.

In 1999, Banks was convicted by a jury in state court of one count of aggravated robbery and was sentenced to a term of imprisonment of 180 months. The Kansas Court of Appeals affirmed his conviction on March 17, 2000, and the Kansas Supreme Court denied review on June 14, 2000. He filed his § 2254 habeas petition in federal district court on June 27, 2000, arguing (1) the charging document was defective; (2) the jury instructions were erroneous; (3) he received ineffective assistance of trial counsel; (4) his trial was tainted by prosecutorial misconduct, (5) there was insufficient evidence to convict; and (6) the state trial court engaged in judicial misconduct. In an order filed October 11, 2002, the district court addressed each of these issues and concluded that Banks was not entitled to relief on any of his claims.

We have carefully reviewed the record on appeal and Banks' filings with this court. We DENY a COA and DISMISS the appeal. The mandate shall issue forthwith.

Entered for the Court

Mary Beck Briscoe
Circuit Judge