

**UNITED STATES COURT OF APPEALS**  
**TENTH CIRCUIT**

**APR 21 2003**

**PATRICK FISHER**  
Clerk

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THOMAS P. BIRD,

Petitioner - Appellant,

v.

DAVID MCKUNE, Warden;  
ATTORNEY GENERAL OF THE  
STATE OF KANSAS,

Respondents - Appellees.

No. 02-3392  
(D.C. No. 00-CV-3461-RDR)  
(D. Kan.)

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**ORDER\***

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Before **EBEL, HENRY** and **HARTZ**, Circuit Judges.

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In 1985, Petitioner Thomas P. Bird was convicted of premeditated murder in Lyon County District Court in Kansas and sentenced to life in prison. His conviction was affirmed by the Kansas Court of Appeals, and the Kansas Supreme

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\*After examining appellant'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) and 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This Order is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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; nevertheless, an order may be cited under the terms and conditions of 10th Cir. R. 36.3.

Court denied review in 1993. He also filed a state postconviction motion pursuant to K.S.A. 60-1507; it, too, was denied in 1993. On November 29, 2000, Bird filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He raised two grounds for relief: first, that the indictment in his case was fatally defective, and second, that the state failed to disclose material, exculpatory evidence regarding one of the state's witnesses.

The district court concluded that Bird's petition was time-barred under the Antiterrorism and Effective Death Penalty Act of 1996, dismissed the petition, and declined to grant Bird a Certificate of Appealability. The court also rejected Bird's argument that the statute of limitations should be equitably tolled because his attorney failed to file either a second state postconviction relief petition or a federal habeas petition, either of which could have tolled the statute of limitations.

We DENY a certificate of appealability for substantially the reasons stated by the district court and DISMISS Bird's appeal.

ENTERED FOR THE COURT

David M. Ebel  
Circuit Judge