

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

NOV 6 2002

PATRICK FISHER
Clerk

DEBRA SUE DEWBERRY,

Petitioner - Appellant,

v.

NEVILLE MASSIE, Warden,

Respondent - Appellee.

No. 02-6025

D.C. No. 00-CV-1281-L
(W.D. Oklahoma)

ORDER AND JUDGMENT *

Before **KELLY** and **BALDOCK**, Circuit Judges, and **BRORBY**, Senior Circuit Judge.

Petitioner-appellant Debra Sue Dewberry was convicted in Oklahoma state court of first degree murder of her newborn child and unlawful disposal of a dead body, and she was sentenced to life in prison without possibility of parole. After her conviction was affirmed on direct appeal by the Oklahoma Court of Criminal Appeals, she filed this action under 28 U.S.C. § 2254 seeking federal habeas

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

relief. The district court denied relief. Petitioner now seeks to appeal two issues: whether trial counsel's assistance was constitutionally ineffective because counsel failed to investigate and present evidence on petitioner's mental state at the time of the offenses, and whether the evidence was sufficient to support her conviction for first degree murder. ¹

Before petitioner may appeal, she must first obtain a certificate of appealability (COA) under 28 U.S.C. § 2253(c). We may issue petitioner a COA only if we conclude that she "has made a substantial showing of the denial of a constitutional right." *Id.* § 2253(c)(2). Based upon our thorough review of the record, petitioner's brief, and the pertinent law, we conclude that petitioner has not made the required showing for a COA.

Accordingly, we DENY petitioner's application for a certificate of appealability, and we DISMISS the appeal.

Entered for the Court

Paul J. Kelly, Jr.
Circuit Judge

¹ After examining petitioner-appellant's brief and the appellate record, this panel has determined unanimously to grant petitioner-appellant's request for a decision on the brief without oral argument. *See* Fed. R. App. P. 34(f); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.