

**UNITED STATES COURT OF APPEALS**

**APR 23 2003**

**TENTH CIRCUIT**

**PATRICK FISHER**  
Clerk

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ROY MARQUEZ,

Petitioner-Appellant,

v.

JOE R. WILLIAMS, Warden;  
ATTORNEY GENERAL FOR THE  
STATE OF NEW MEXICO,

Respondents-Appellees.

No. 03-2008

(D.C. No. CIV-02-536 JP/WWD)

(D. New Mexico)

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**ORDER AND JUDGMENT\***

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Before **KELLY, BRISCOE** and **LUCERO**, Circuit Judges.

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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.

Petitioner Roy Marquez, 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

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\*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

petition. We deny his request for a COA and dismiss the appeal.

On January 3, 1997, Marquez was sentenced to 62 1/2 years in prison after he was convicted by a jury of intimidating a witness, kidnaping, and criminal sexual penetration of a minor. On November 20, 1997, his direct appeal was denied by the New Mexico Court of Appeals, and the New Mexico Supreme Court denied certiorari on January 6, 1998. He filed his state habeas action on December 11, 2000, which was denied on January 25, 2002, and the New Mexico Supreme Court denied certiorari on April 22, 2002. On May 8, 2002, Marquez filed his § 2254 petition in federal court. The magistrate judge found that Marquez' § 2254 petition was untimely filed under 28 U.S.C. § 2244(d)(1)(A), and recommended that it be dismissed. The district court adopted the findings of the magistrate, denied Marquez' motion for tolling, and dismissed the petition as untimely.

Issuance of a COA is jurisdictional. Miller-El v. Cockrell, 123 S. Ct. 1029, 1039 (2003). A COA can issue only “if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). “A petitioner satisfies this standard by demonstrating that jurists of reason could disagree with the district court’s resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.” Miller-El, 123 S. Ct. at 1034. After careful review of the record, we conclude the requirements for issuance of a COA have not been met.

We DENY the request for a COA and DISMISS the appeal for substantially the same reasons as stated in the magistrate judge's report dated November 19, 2002, and the district court's order entered December 16, 2002. Marquez' motion to proceed in forma pauperis on appeal is DENIED as moot. The mandate shall issue forthwith.

Entered for the Court

Mary Beck Briscoe  
Circuit Judge