

UNITED STATES COURT OF APPEALS

FEB 10 2005

TENTH CIRCUIT

PATRICK FISHER
Clerk

DESI GALLEGOS,

Petitioner-Appellant,

v.

CARL ZENON, Warden, A.V.C.F.;
JOE ORTIZ, Executive Director,
Colorado Department of Corrections;
and KEN SALAZAR, Attorney
General of the State of Colorado,

Respondents-Appellees.

No. 04-1352

(D.C. No. 04-Z-1198)

(D. Colo.)

ORDER

Before **BRISCOE, McKAY, and HARTZ**, Circuit Judges.

This is a *pro se* 28 U.S.C. § 2254 prisoner appeal. Mr. Gallegos is a prisoner in the custody of the Colorado Department of Corrections. He challenges his August 27, 1997, Colorado state court conviction for vehicular homicide. Mr. Gallegos filed his federal petition on June 3, 2004. The magistrate judge subsequently ordered Mr. Gallegos to show cause within thirty days why the application should not be denied as time-barred pursuant to 28 U.S.C. § 2244(d). Following submission of a response, the district court dismissed the action as time-barred. This appeal followed.

The district court denied Mr. Gallegos's application for a certificate of appealability and his request to proceed *in forma pauperis*. He then applied to this court for a certificate of appealability and renewed his application to proceed *in forma pauperis*.

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) (2000). 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 Petitioner'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 that 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 August 20, 2004, 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. Appellant's motion to proceed *in forma pauperis* on appeal

is **GRANTED.**

Entered for the Court

Monroe G. McKay
Circuit Judge