

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

August 24, 2005

PATRICK FISHER
Clerk

MACK RAY RUCKER, JR.,

Petitioner - Appellant,

v.

CHARLES RAY, Warden; THE
ATTORNEY GENERAL OF THE
STATE OF OKLAHOMA,

Respondents - Appellees.

No. 04-6209
(W.D. Oklahoma)
(D.Ct. No. 03-CV-1740-R)

**ORDER DENYING CERTIFICATE OF APPEALABILITY
AND DISMISSING APPEAL**

Before **KELLY, O'BRIEN**, and **TYMKOVICH**, 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.

Mack Ray Rucker Jr., *pro se*,¹ appeals the district court's decision denying him habeas relief, *see* 28 U.S.C. § 2254, from his Oklahoma conviction for

¹ We construe *pro se* pleadings liberally. *Ledbetter v. City of Topeka, Kan.*, 318 F.3d 1183, 1187 (10th Cir. 2003).

domestic violence, affirmed by the Oklahoma Court of Criminal Appeals. *See Rucker v. Oklahoma*, No. F-2001-1341 (OCCA Dec. 20, 2002) (unpublished). On appeal, Rucker argues that 1) there was insufficient evidence to support his conviction; 2) his attorney provided ineffective representation; and 3) he was denied a fair trial due to cumulative error.

To pursue this appeal, Rucker must first obtain a certificate of appealability (COA). *See* 28 U.S.C. § 2253(c)(1)(A). To be entitled to a COA, he must make “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). To make this showing, he must establish that “reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved [by the district court] 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) (internal quotations omitted). After carefully considering Rucker’s arguments and the entire record, we concur with the well-written and thoughtful report and recommendation of the magistrate judge, adopted by the district court in its order denying habeas relief. Rucker has failed to make a sufficient showing that he is entitled to a COA on any of his claims. Therefore, we DISMISS this appeal.

In addition, Rucker’s pending request to proceed *in forma pauperis* filed in this Court is DENIED. He shall remit the full amount of the filing fee within

twenty (20) days of this order.

Entered by the Court:

Terrence L. O'Brien
United States Circuit Judge