

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

August 17, 2006

Elisabeth A. Shumaker
Clerk of Court

DARRYL DESHON BREWER,

Petitioner - Appellant,

vs.

ED L. EVANS,

Defendant - Appellee.

No. 06-6104
(D.C. No. CIV-05-780-R)
(W.D. Okla.)

ORDER
DENYING CERTIFICATE OF APPEALABILITY

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

Petitioner-Appellant Darryl Deshon Brewer, a state inmate appearing pro se, seeks a certificate of appealability (“COA”) so that he may appeal from the district court’s denial of his habeas petition filed pursuant to 28 U.S.C. § 2254. A COA requires “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). The district court adopted the unobjected-to report and recommendation of the magistrate judge and dismissed Mr. Brewer’s petition. Because Mr. Todd has failed to demonstrate that “reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” See Slack v. McDaniel, 529 U.S. 473, 484 (2000), we deny a COA and dismiss the appeal.

The issuance of a COA is jurisdictional. Miller-El v. Cockrell, 537 U.S. 322, 336 (2003). Where the district court dismisses a petition on procedural grounds, a COA requires the inmate to demonstrate that it is reasonably debatable whether (1) the petition states a valid claim of the denial of a constitutional right, and (2) the district court’s procedural ruling is correct. Slack, 529 U.S. at 484. Where the district court has rejected a habeas petitioner’s constitutional claims on the merits, the petitioner must demonstrate that “reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” Id.

As noted, the magistrate judge issued a rather thorough exposition of Mr. Brewer’s claims in the report and recommendation, which urged dismissal. Mr. Brewer, was granted an extension of time in which to object to that report and recommendation, but did not do so. Instead, he chose to file a motion to amend, which the district court denied. Even if we liberally construed the motion to amend as objections to the magistrate’s report and recommendation, we would not find the district court’s disposition reasonably debatable.

In his initial petition, Mr. Brewer asserted four claims, but he only presses two of those before this court, viz., (1) ineffective assistance of trial counsel, and (2) ineffective assistance of appellate counsel. Upon thorough review of the magistrate’s report, the district court’s order, Mr. Brewer’s briefing, and the record as a whole, we are unable to conclude that “reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.”

Slack, 529 U.S. at 484.

We DENY a COA and DISMISS the appeal.

Entered for the Court

Paul J. Kelly, Jr.
Circuit Judge