

UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

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**Filed 10/22/96**

JOSE HERNANDEZ,

Petitioner-Appellant,

v.

DONALD DORSEY, ATTORNEY  
GENERAL OF THE STATE OF NEW  
MEXICO,

Respondents-Appellees.

No. 95-2230  
(D.C. No. CIV-94-44-HB)  
(D. N.M.)

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ORDER AND JUDGMENT\*

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Before BRISCOE and MURPHY, Circuit Judges, and VAN BEBBER,\*\* District Judge.

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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

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\* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

\*\* Honorable G. Thomas Van Bebber, Chief Judge, United States District Court for the District of Kansas, sitting by designation.

this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. The case is therefore ordered submitted without oral argument.

Petitioner Jose Hernandez appeals from the district court's judgment dismissing his second federal habeas petition, filed pursuant to 28 U.S.C. § 2254. The only issue presented on appeal is whether the district court erred in dismissing petitioner's double jeopardy claim as abuse of the writ. Our jurisdiction over this appeal arises under 28 U.S.C. § 1291.

On appeal, petitioner concedes that he filed two federal habeas petitions, and that his double jeopardy claim was not raised in his first petition. He asserts as cause for this failing 1) his reliance on "jailhouse lawyers," 2) his inability to speak English, and 3) ineffectiveness of counsel on his first habeas petition.

After careful consideration of the parties' briefs on appeal and the appendix provided on appeal, we conclude that the district court correctly decided this case. Therefore, for substantially the same reasons as set out in the magistrate judge's report, dated September 1, 1995, adopted by the district court on September 19,

1995, the judgment of the United States District Court for the District of New Mexico is AFFIRMED.

Entered for the Court

G. Thomas Van Bebber  
District Judge