

**JUL 29 1997**

**UNITED STATES COURT OF APPEALS**  
**TENTH CIRCUIT**

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**PATRICK FISHER**  
Clerk

ROBERT SAMUEL CHAPPELL,

Petitioner-Appellant,

v.

JOHN SHANKS, Warden; ATTORNEY  
GENERAL OF THE STATE OF NEW  
MEXICO,

Respondents-Appellees.

No. 96-2236  
(D.C. No. CIV-96-125-LH)  
(District of New Mexico)

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**ORDER**

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Before **SEYMOUR**, Chief Judge; **PORFILIO** and **MURPHY**, Circuit Judges.

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Robert Samuel Chappell, a state prisoner, seeks to appeal the denial of his petition for a writ of habeas corpus as an abuse of the writ. The matter is pending before us on an application for a certificate of appealability. We have examined Mr. Chappell's brief and the record, including the magistrate judge's amended proposed recommendation and conclude no error was committed.

Principally for the reasons given in the recommendations of the magistrate judge, we hold Mr. Chappell has failed to demonstrate the denial of a constitutional right by showing the issues raised in his appeal are debatable among jurists; that a court could resolve the issues differently; or that the questions deserve further proceedings. The certificate of appealability is **DENIED** and the appeal is **DISMISSED**. 28 U.S.C. § 2253(c)(2); *Lennox v. Evans*, 87 F.3d 431 (10th Cir. 1996). The motion for leave to proceed without payment of fees is **GRANTED**.

ENTERED FOR THE COURT

John C. Porfilio  
Circuit Judge