

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

JUL 29 1997

PATRICK FISHER
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

MARVIN M. SMITH,

Defendant-Appellant.

No. 96-3385
(D.C. No. 96-3398-RDR)
(District of Kansas)

ORDER

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

Marvin M. Smith attempts to appeal from an order denying relief under 28 U.S.C. § 2255. The matter is before us upon an application for a certificate of appealability. Having examined Mr. Smith's brief and the record before us, we conclude the district court did not err. Therefore, Mr. Smith has failed to demonstrate 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).

ENTERED FOR THE COURT

John C. Porfilio
Circuit Judge