

UNITED STATES COURT OF APPEALS
Filed 12/13/96
TENTH CIRCUIT

LEE ALLEN AASE,
Petitioner-Appellant,

v.

SCOTT CARVER, Warden,
Utah State Prison,
Respondent-Appellee.

No. 96-4054
(D.C. No. 92-CV-1059-W)
(Utah)

ORDER AND JUDGMENT*

Before **SEYMOUR**, Chief Judge, **KELLY** and **LUCERO**, 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); 10th Cir. R. 34.1.9. The cause is therefore ordered submitted without oral argument.

*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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 10th Cir. R. 36.3.

Lee Allen Aase filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254 contending that his right to a fair and impartial trial was denied due to excessive and prejudicial pre-trial publicity. The matter was referred to a magistrate judge and counsel was appointed for petitioner. After conducting an evidentiary hearing at which five of the eight jurors from Mr. Aase's state criminal trial testified, the magistrate judge issued a report recommending that the petition be denied on the grounds that Mr. Aase failed to establish the requisite prejudice. The district court conducted a de novo review and affirmed the Report and Recommendation of the magistrate judge.

We have reviewed the record and Mr. Aase's arguments on appeal. We are not persuaded that the district court erred either in its analysis or its conclusions. We therefore **AFFIRM** the district court for the reasons set out in its Memorandum Decision and Order dated February 9, 1996.

ENTERED FOR THE COURT

Stephanie K. Seymour
Chief Judge