

JUN 16 1997

PATRICK FISHER
Clerk

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

KEITH D. LARKINS,

Petitioner-Appellant,

v.

R. MICHAEL CODY,

Respondent-Appellee.

No. 96-6171
(D.C. No. CV-95-600-L)
(W.D. Okla.)

ORDER AND JUDGMENT*

Before EBEL, HENRY, and MURPHY, Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously to grant the parties' request for a decision on the briefs without oral argument. See Fed. R. App. P. 34(f) and 10th Cir. R. 34.1.9. The case 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* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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 of 10th Cir. R. 36.3.

Petitioner Keith D. Larkins appeals from the district court's judgment denying his habeas petition, filed pursuant to 28 U.S.C. § 2254. Our jurisdiction arises under 28 U.S.C. § 1291. On appeal, petitioner presents the following arguments: 1) his Fourth Amendment search and seizure claims are cognizable on habeas review; 2) the stop and search of petitioner was constitutionally invalid; 3) his sentence for possession of cocaine was excessive; and 4) his sentence violates the Eighth Amendment.

After careful consideration of the briefs and appendix filed 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 and recommendation, dated September 11, 1995, adopted by the district court on May 1, 1996, the judgment of the United States District Court for the Western District of Oklahoma is AFFIRMED.

Entered for the Court

David M. Ebel
Circuit Judge