

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

JAN 29 1997

PATRICK FISHER
Clerk

WILLIAM SHERBURN,)
)
 Petitioner-Appellant,)
)
 v.)
)
 RON WARD; ATTORNEY GENERAL)
 OF THE STATE OF OKLAHOMA,)
)
 Respondents-Appellees.)

No. 96-6236
(D.C. No. CIV-95-1836-R)
(W.D. Oklahoma)

ORDER AND JUDGMENT*

Before **ANDERSON, LOGAN** and **MURPHY**, Circuit Judges.

This matter is before the court on petitioner William Sherburn's application for a certificate of appealability (formerly a certificate of probable cause). His right to appeal the federal district court's denial of habeas corpus relief is conditioned upon this court granting a certificate of appealability. 28 U.S.C. § 2253. The law, as recently amended, instructs that we may issue such a certificate "only if the applicant has made a substantial

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

showing of the denial of a constitutional right,” and we “indicate which specific issue or issues satisfy [that] showing.” Id. § 2253(c)(2) and (3).

Petitioner asserted in his habeas corpus petition numerous grounds for relief from his state court conviction for attempting to obtain merchandise by false pretenses for which he received a twenty-year sentence.

The Petitioner raise[d] the following eight grounds for relief:
(1) Violation of his Fifth and Fourteenth Amendment rights by allowing him to be “paraded” before the jury in leg shackles; (2) Prosecutorial misconduct; (3) Improper admission of evidence of prior convictions; (4) Improper use of prior convictions which contained a name discrepancy; (5) Error in refusing to permit him to attack the admission of his prior convictions; (6) Error in admitting evidence of a crime with which he was not properly charged; (7) Improperly charging him under a general statute; (8) Error in submitting a flight instruction.

I R. doc. 26. After the magistrate judge recommended the petition be dismissed, petitioner filed objections.

We have considered the arguments in petitioner’s brief and examined the record, including the transcript of the trial. The magistrate judge and the district court correctly analyzed the facts and law in the magistrate judge’s findings and recommendations of February 28, 1996, and the district court’s memorandum opinion and order of June 26, 1996. We conclude that petitioner has failed to make the necessary showing to warrant our issuance of a certificate of appealability. Therefore, we deny his application and DISMISS the appeal.

The mandate shall issue forthwith.

Entered for the Court

James K. Logan
Circuit Judge