

UNITED STATES COURT OF APPEALS  
TENTH CIRCUIT

JAN 9 1998

**PATRICK FISHER**  
Clerk

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PEGGY SANDOVAL,

Petitioner - Appellant,

vs.

MUNICIPAL COURT, SAN JUAN  
COUNTY; TOM UDALL, Attorney  
General for the State of New Mexico,

Respondents - Appellees.

No. 97-2098

(D.C. No. CIV-96-948 LH/WWD)

(D.N.M.)

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**ORDER AND JUDGMENT\***

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Before **BRORBY**, **EBEL**, and **KELLY**, Circuit Judges.\*\*

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Petitioner-appellant Peggy Sandoval, appearing pro se, appeals from the denial of her habeas petition, 28 U.S.C. § 2254, and dismissal of the action for lack of jurisdiction. The district court denied a certificate of appealability and it does not appear that Ms. Sandoval has applied for one in this court. See 28

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\* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

\*\* After examining the briefs and the appellate record, this three-judge panel has determined unanimously that oral argument would not be of material assistance in 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.

U.S.C. § 2253(c)(2). Despite the invocation of various constitutional provisions and claims for general relief, the petition was properly construed as a collateral attack on the conviction. The district court adopted the magistrate judge's conclusion that Ms. Sandoval could not satisfy the "in custody" requirement of habeas corpus based solely on a speeding conviction resulting in a \$30.00 fine and a \$17.00 assessment of court costs. See United States v. Watroba, 56 F.3d 28, 29 (6th Cir.), cert. denied, 116 S. Ct. 269 (1995) (§ 2255); United States v. Segler, 37 F.3d 1131, 1137 (5th Cir. 1994) (same); Spring v. Caldwell, 692 F.2d 994, 999 (5th Cir. 1982) (§ 2254). We agree.

We construe Ms. Sandoval's opening brief as an application for a certificate of appealability, DENY it, and DISMISS the appeal.

Entered for the Court

Paul J. Kelly, Jr.  
Circuit Judge