

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

MAY 11 1998

PATRICK FISHER
Clerk

JOE ANGEL DUARTE,

Petitioner-Appellant,

v.

RONALD LYTLE, Warden;
ATTORNEY GENERAL FOR THE
STATE OF NEW MEXICO,

Respondents-Appellees.

No. 97-2290
(D.C. No. CIV-97-228-JC)
(D. N.M.)

ORDER AND JUDGMENT*

Before **PORFILIO**, **BARRETT**, and **HENRY**, Circuit Judges.

After examining appellant's brief and the 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 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* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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 seeks a certificate of appealability, see 28 U.S.C. § 2253(c), that would enable him to appeal the district court's denial of habeas relief, see 28 U.S.C. § 2254, from his New Mexico convictions for voluntary manslaughter and conspiracy to tamper with evidence. His seven grounds for habeas relief essentially challenge 1) the trial court's failure to give a jury instruction on the use of deadly force in defense of another; 2) the trial court's determination that petitioner was competent to stand trial; and 3) the validity of petitioner's prior convictions used to enhance his sentence.

In order to obtain a certificate of appealability, petitioner must make a substantial showing of the denial of a federal right. See Nguyen v. Reynolds, 131 F.3d 1340, 1345 (10th Cir. 1997). Upon careful consideration of the record and the parties' arguments, we DENY petitioner's application for a certificate of appealability for substantially the reasons stated by the magistrate judge in his report and recommendation, dated July 23, 1997, and adopted by the district court on August 19, 1997.

The mandate shall issue forthwith.

Entered for the Court

John C. Porfilio
Circuit Judge