

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

MAR 30 1998

PATRICK FISHER
Clerk

PEDRO BARRON,

Petitioner-Appellant,

v.

TIM LEMASTER, Warden, and
ATTORNEY GENERAL FOR THE
STATE OF NEW MEXICO,

Respondents-Appellees.

No. 97-2344
(D.C. No. CIV-97-636-JC)
(D. N.M.)

ORDER AND JUDGMENT*

Before **SEYMOUR**, Chief Judge, **BRORBY**, and **BRISCOE**, 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. Therefore, the case is ordered submitted without oral argument.

Petitioner Pedro Barron, appearing pro se and proceeding in forma pauperis, requests a certificate of appealability to appeal the district court's denial of his petition for

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

habeas corpus. Because Barron has failed to make “a substantial showing of the denial of a constitutional right,” 28 U.S.C. § 2253(c)(2), we deny his request for a certificate of appealability and dismiss the appeal.

Barron was arraigned in New Mexico state court in two separate criminal cases, each charging him with two counts of trafficking cocaine. He subsequently pleaded guilty to the four counts and was sentenced to a total of eighteen years’ imprisonment. He did not file a direct appeal, but filed a habeas petition in state district court, which was denied, and then filed a habeas petition in the state supreme court, which was denied. Barron filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 in federal district court, claiming: (1) the state district court violated his due process rights by denying his habeas petition without conducting an evidentiary hearing; (2) he was denied effective assistance of counsel during his state criminal proceedings; and (3) he was placed in double jeopardy because he was subjected to imprisonment and civil forfeiture of property for the same criminal offenses. The district court adopted the magistrate court’s recommendation that the petition be denied.

We have conducted a de novo review of Barron’s application for a certificate of appealability, his brief on appeal, the magistrate’s report and recommendation, and the entire record on appeal. We conclude Barron has failed to demonstrate the district court’s resolution of his habeas petition is debatable or is reasonably suspect to a different outcome on appeal to this court. This same review leads us to conclude none of the issues

raised are deserving of further proceedings.

Barron's request for a certificate of appealability is DENIED, and the appeal is DISMISSED. The mandate shall issue forthwith.

Entered for the Court

Mary Beck Briscoe
Circuit Judge