

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

JUN 23 1998

PATRICK FISHER
Clerk

ELIJAH CHARLES ANDERSON,

Petitioner-Appellant,

v.

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

Respondents-Appellees.

No. 97-2368
(D.C. No. CIV-96-1367-SC)
(D. New Mexico)

ORDER AND JUDGMENT*

Before **BALDOCK, EBEL** and **MURPHY**, Circuit Judges.

Elijah Charles Anderson (“Anderson”) appeals the denial of his petition for a writ of habeas corpus under 28 U.S.C. § 2254.

Anderson was convicted in New Mexico state court of first-degree murder and robbery and was found to be a habitual offender. (R. Vol. 2, #13, Ex. A.) He

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 This Order and Judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

was sentenced to life imprisonment for the murder, plus consecutive sentences of three years for the robbery and eight years for being a habitual offender. (Id.) After exhausting his state remedies, Anderson filed a petition for a writ of habeas corpus in which he raised seven claims.¹ (R. Vol. I #1; R. Vol. I #14 at 2.) Based on two reports and recommendations by a magistrate judge, the district court dismissed Anderson's petition with prejudice. (R. Vol. I #23, #28.) It denied his application for a certificate of appealability. (R. Vol. I #31.)

On appeal, Anderson requests that we issue a certificate of appealability and raises four issues. Three issues are procedural – he contends that the district court erred in dismissing his petition without allowing discovery, without appointing counsel for Anderson, and without conducting an evidentiary hearing. The fourth issue appears to concern the merits of the claims he presented to the district court.

¹ Specifically, Anderson alleged: (1) his conviction was obtained in violation of his right against self-incrimination; (2) New Mexico's felony murder statute creates a presumption of mens rea; (3) he was denied due process when the trial court admitted census data over his objection; (4) he was denied due process when the trial court refused to instruct the jury on larceny as a lesser included offense of robbery; (5) the evidence was insufficient to support the verdict; (6) he suffered ineffective assistance of trial counsel; and (7) the prosecutors committed misconduct. (R. Vol. I #1; R. Vol. I #14 at 2.)

We do not find that Anderson has made a substantial showing of the denial of a constitutional right. See 28 U.S.C. § 2253(c). Therefore, we deny a certificate of appealability and DISMISS the appeal.

The mandate shall issue forthwith.

ENTERED FOR THE COURT

David M. Ebel
Circuit Judge