

**JAN 22 1998**

**PATRICK FISHER**  
Clerk

UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JAMES B. KIMBALL,

Defendant-Appellant.

No. 97-3069  
(D.C. No. 96-CV-3528)  
(D. Kan.)

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**ORDER AND JUDGMENT\***

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

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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.

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\* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

Defendant appeals from a district court order denying his motion to vacate, set aside or correct sentence under 28 U.S.C. § 2255. Because the motion was filed after the effective date of the Antiterrorism and Effective Death Penalty Act of 1996, our review is conditioned upon the issuance of a certificate of appealability pursuant to 28 U.S.C. § 2253. See United States v. Kunzman, 125 F.3d 1363, 1364 n.2 (10th Cir. 1997).

Based upon our review, we conclude that defendant has not “made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). Therefore, a certificate of appealability is DENIED, and the appeal is DISMISSED.

Entered for the Court

Paul J. Kelly, Jr.  
Circuit Judge