

**UNITED STATES COURT OF APPEALS**  
**FOR THE TENTH CIRCUIT**

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**SEP 1 1998**

**PATRICK FISHER**  
Clerk

JULIUS C. RIGGS,

Petitioner-Appellant,

v.

H. N. SCOTT,

Respondent-Appellee.

No. 97-6431  
(D.C. No. 97-CV-617)  
(W.D. Okla.)

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**ORDER AND JUDGMENT** \*

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Before **BRORBY** , **McKAY** , and **BRISCOE** , Circuit Judges.

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\* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

Petitioner seeks the issuance of a certificate of appealability, see 28 U.S.C. § 2253(c), that would enable him to appeal the district court's decision denying habeas relief, see id. § 2254, from his Oklahoma conviction for first degree manslaughter. Issuance of a certificate of appealability is appropriate only if petitioner makes a substantial showing of the deprivation of a constitutional right. See id. § 2253(c)(2).

As grounds for habeas relief, petitioner argues there was insufficient evidence to support his conviction, his sentence was excessive, defense counsel's ineffectiveness resulted in the loss of an opportunity to appeal the denial of reverse certification of petitioner as a child, the trial court failed to instruct the jury on second degree manslaughter and excusable homicide, abused its discretion in denying petitioner a continuance, erred in denying reverse certification of petitioner as a child, failed to advise petitioner of his right to appeal the denial of reverse certification, and failed to sequester the jury. We DENY the certificate of appealability for substantially the reasons stated in the magistrate judge's report and recommendation, dated October 15, 1997, and adopted by the district court on November 26, 1997, and we DISMISS this appeal.

The mandate shall issue forthwith.

Entered for the Court

Mary Beck Briscoe  
Circuit Judge