

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

SEP 15 1998

PATRICK FISHER
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

AMOS ELMER PERKINS,

Defendant-Appellant.

No. 97-7118
(D.C. No. 97-CV-351-S
&
95-CR-51-S)
(E.D. Okla.)

ORDER AND JUDGMENT *

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

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* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

Defendant appeals from the district court's 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), cert. denied, 118 S. Ct. 1375 (1998).

Defendant argues that this court should issue a certificate of appealability because he was denied effective assistance of counsel at sentencing and on direct appeal. According to defendant, counsel should have challenged a four-point sentencing enhancement under U.S.S.G. § 2K2.1(b)(5).

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. Defendant's request for appointment of counsel is DENIED. The mandate shall issue forthwith.

Entered for the Court

Robert H. Henry
Circuit Judge