

**FEB 8 1999**

**PATRICK FISHER**  
Clerk

UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

---

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

DENNIS BATES FLETCHER,

Defendant-Appellant.

No. 98-6072  
(D.C. No. 97-CV-630)  
(W.D. Okla.)

---

ORDER AND JUDGMENT \*

---

Before **ANDERSON** , **KELLY** , and **LUCERO** , 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)(2); 10th Cir. R. 34.1(G). 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\* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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 seeks a certificate of appealability, see 28 U.S.C. § 2253, that would permit his appeal from the district court’s denial of 28 U.S.C. § 2255 relief from his convictions for the possession and distribution of controlled substances, see 21 U.S.C. § 841(a)(1). He asserts five grounds for relief: 1) the sentencing court erred in failing to conduct a hearing to determine his ability to pay the \$75,000 fine imposed, following this court’s remand on direct appeal; 2) the sentencing court relied on the false testimony of “drug addict informers” in determining the amount of controlled substances involved for sentencing purposes; 3) the government breached the plea agreement; 4) the sentencing court erred in sentencing defendant for the distribution of d-methamphetamine, rather than l-methamphetamine; and 5) defendant’s attorney provided ineffective assistance of counsel. Because defendant has failed to make “a substantial showing of the denial of a constitutional right,” we deny his application for a certificate of appealability and DISMISS this appeal. 28 U.S.C. § 2253(c)(2).

The mandate shall issue forthwith.

Entered for the Court

Stephen H. Anderson  
Circuit Judge