

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

AUG 5 1999

PATRICK FISHER
Clerk

JAMES MURPHY,

Petitioner-Appellant,

v.

STEVE HARGETT,

Respondent-Appellee.

No. 98-6467

(D.C. No. 97-CV-637)

(W.D. Okla.)

ORDER AND JUDGMENT *

Before **ANDERSON, KELLY** and **BRISCOE**, 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.

Petitioner James Murphy appeals the district court's denial of his petition for habeas corpus filed under 28 U.S.C. § 2254. We affirm.

On appeal, Murphy argues the evidence at his trial was insufficient to find

*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

him guilty of drug trafficking beyond a reasonable doubt, and that his counsel was constitutionally ineffective for failing to raise the sufficiency argument at trial or on appeal. In order for us to address whether Murphy's counsel was ineffective for failure to challenge the sufficiency of evidence, we would first review the entire trial transcript to determine if this issue has any merit. Murphy's designated appendix, however, does not include any portion of the trial transcript. Hence, we are unable to conduct an adequate appellate review and must defer to the trial court's rulings. See United States v. Vasquez , 985 F.2d 491, 494-95 (10th Cir. 1993).

AFFIRMED.

Entered for the Court

MARY BECK BRISCOE
Circuit Judge