

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

MAY 18 1999

PATRICK FISHER
Clerk

JOHNSON WISDOM,

Petitioner - Appellant,

vs.

RON WARD; THE ATTORNEY
GENERAL OF THE STATE OF
OKLAHOMA,

Respondents - Appellees.

No. 98-7114
(D.C. No. CIV-97-527-P)
(E.D. Okla.)

ORDER AND JUDGMENT*

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

Mr. Wisdom seeks to appeal from the district court's dismissal of his petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254. Mr. Wisdom was convicted in state court of first degree murder, and on direct appeal challenged the use of a videotaped statement in his trial on the basis that he did

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

** After examining the briefs and the appellate record, this three-judge panel has determined unanimously that oral argument would not be of material assistance in the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1 (G). The cause is therefore ordered submitted without oral argument.

not voluntarily, knowingly, and intelligently waive his constitutional rights. The Oklahoma Court of Criminal Appeals affirmed his conviction, finding that

[t]he totality of the circumstances surrounding the taking of [Mr. Wisdom's] statement, including the characteristics of the accused and the details of the interrogation, support a finding that [Mr. Wisdom] knowingly and voluntarily relinquished his Miranda rights and that he did not make his statement pursuant to trickery or under coercive circumstances.

Wisdom v. State, 918 P.2d 384, 392 (Okla. Crim. App. 1996).

Mr. Wisdom raised the same arguments in his federal habeas petition. The district court denied Mr. Wisdom's request for an evidentiary hearing, finding that disputed factual issues could be resolved by a review of the record. The court then held that Mr. Wisdom failed to show that the trial court's decision to admit the videotape into evidence violated clearly established federal law or that it was based on an unreasonable determination of factual issues. After a careful reading of the briefs and record, we agree that Mr. Wisdom has not shown by clear and convincing evidence that the trial court's finding that he was not tricked or coerced into making his statement was incorrect, see 28 U.S.C. § 2254(e)(1); nor has he shown that the trial court's finding that he knowingly and voluntarily waived his Miranda rights was contrary to federal law. See id. § 2254(d)(1).

Accordingly, because Mr. Wisdom has failed to make "a substantial showing of a denial of a constitutional right," 28 U.S.C. § 2253(c)(2), we DENY his application for a certificate of appealability and DISMISS his appeal.

Entered for the Court

Paul J. Kelly, Jr.
Circuit Judge