

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

JUL 12 1999

PATRICK FISHER
Clerk

DAVID ATENCIO,

Petitioner-Appellant,

v.

WILLIAM WILSON and ATTORNEY
GENERAL FOR THE STATE OF
NEW MEXICO,

Respondents-Appellees.

No. 99-1077
(D.C. No. 98-Z-2632)
(D. Colo.)

ORDER AND JUDGMENT*

Before **TACHA, McKAY, and MURPHY**, 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

*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

therefore ordered submitted without oral argument.

Petitioner-Appellant David Atencio filed this pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. In a written order filed February 4, 1999, the district court dismissed the application on the ground that it was barred by the one-year limitation period in 28 U.S.C. § 2244(d). The court also considered each of Petitioner's claims that the statute of limitations should be tolled and rejected them. The district court subsequently denied Petitioner leave to appeal *in forma pauperis* pursuant to 28 U.S.C. § 1915(a)(3), concluding that the appeal was not taken in good faith and that Petitioner had not shown the existence of a reasoned, nonfrivolous argument in support of the issues raised on appeal. See DeBardleben v. Quinlan, 937 F.2d 502, 505 (10th Cir. 1991). In addition, the court declined to issue him a certificate of appealability because he failed to make a substantial showing of the denial of a constitutional right. See 28 U.S.C. § 2253(c)(2). Petitioner has renewed his request to proceed on appeal *in forma pauperis* and his application for a certificate of appealability in this court.

Having reviewed Petitioner's applications, his brief, and the record, we agree with the district court that the petition is time-barred and that no equitable tolling principles apply to make the petition timely. We therefore **DENY** Petitioner leave to proceed on appeal *in forma pauperis*, **DENY** the application

for a certificate of appealability, and **DISMISS** the appeal.

Entered for the Court

Monroe G. McKay
Circuit Judge