

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

MAR 28 2000

PATRICK FISHER
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

TIM LANDRY,

Defendant-Appellant.

No. 99-5236
(N. District of Oklahoma)
(D.C. No. 98-CV-556-B)

ORDER AND JUDGMENT*

Before **BRORBY, KELLY, 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 therefore ordered submitted without oral argument.

This case is before the court on Tim Landry's request for a certificate of appealability ("COA"). Landry seeks a COA so that he can appeal the district

*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata and collateral estoppel.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

court's denial of his 28 U.S.C. § 2255 petition. *See* 28 U.S.C. § 2253(c) (providing that a COA is a necessary predicate to an appeal from the denial of a § 2255 petition). Landry is entitled to a COA only upon making "a substantial showing of the denial of a constitutional right." *See id.* § 2253(c)(2). He can make such a showing by demonstrating that the district court's resolution of the issues he seeks to raise on appeal are reasonably debatable, subject to a different resolution on appeal, or otherwise deserving of further proceedings. *See Barefoot v. Estelle*, 463 U.S. 880, 893 (1983). In his § 2255 petition, Landry broadly asserted that his guilty plea was not knowing and voluntary and that both his trial and appellate counsel were ineffective. In an exceedingly thorough Order, the district court cited to controlling Supreme Court and Tenth Circuit authority and rejected each of Landry's claims on the merits. This court has conducted an equally thorough *de novo* review of Landry's request for a COA and accompanying brief, the district court's Order, and the entire record on appeal. After such review, this court has nothing to add to the district court's clear, comprehensive, and correct resolution of Landry's claims. Accordingly, this court **DENIES** Landry's request for a COA for substantially those reasons set

forth in the district court's Order dated November 15, 1999, and **DISMISSES** this appeal. Landry's motion for bail pending resolution of this appeal is **DENIED** as moot.

ENTERED FOR THE COURT:

Michael R. Murphy
Circuit Judge