

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

APR 19 2000

PATRICK FISHER
Clerk

JESSE A. KILGORE, JR.,

Petitioner-Appellant,

v.

REGINALD HINES,

Respondent-Appellee.

No. 99-6393

(D.C. No. CIV-99-431-C)
(W.D. Okla.)

ORDER AND JUDGMENT*

Before **BALDOCK, HENRY, and LUCERO**, Circuit Judges.**

Petitioner Jesse A. Kilgore, Jr., proceeding pro se, appeals the district court's denial of his petition for a writ of habeas corpus under 28 U.S.C. § 2254. The district court denied Petitioner's motion to proceed in forma pauperis on appeal, see 28 U.S.C. § 1915(a)(1), and denied his application for a certificate of

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

** After examining the briefs and appellate record, the panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a)(2)(c); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

appealability, see 28 U.S.C. § 2253(c)(2). We deny Petitioner's application for a certificate of appealability and dismiss Petitioner's appeal. ¹

Petitioner was convicted of unlawful delivery of a controlled drug in the District Court of Lincoln County, Oklahoma, and sentenced to 22.5 years imprisonment. The Oklahoma Court of Criminal Appeals affirmed on March 17, 1996. On March 31, 1999, Petitioner filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 claiming ineffective assistance of counsel at trial and on appeal. The magistrate judge issued a thorough report and recommendation denying the petition as untimely because Petitioner failed to file his petition within the one-year statute of limitations set forth in 28 U.S.C. § 2244(d). The district court adopted the magistrate judge's report and recommendation and summarily dismissed the petition. The district court subsequently denied Petitioner's application for a certificate of appealability.

We have thoroughly reviewed the record on appeal, Petitioner's brief, the magistrate judge's report and recommendation, and the district court's order. We deny Petitioner's application for a certificate of appealability for substantially the reasons set forth in the magistrate judge's report and recommendation.

¹ Petitioner has since paid the appellate filing fee, rendering his application to proceed in forma pauperis on appeal moot.

CERTIFICATE OF APPEALABILITY DENIED; APPEAL DISMISSED.

Entered for the Court,

Bobby R. Baldock
Circuit Judge