

April 27, 2011

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

CHRISTOPHER W. FRANCIS,

Petitioner-Appellant,

v.

JANE STANDIFIRD,

Respondent-Appellee.

No. 11-6012
(D.C. No. 5:10-CV-00722-W)
(D. Wyo.)

ORDER DENYING CERTIFICATE OF APPEALABILITY*

Before **LUCERO, EBEL,** and **GORSUCH,** Circuit Judges.

Christopher Francis pleaded guilty to child neglect in 2005 and is currently serving his sentence in an Oklahoma state penitentiary. In 2010, Mr. Francis filed a petition for relief under 28 U.S.C. § 2254. The district court dismissed Mr. Francis’s petition after determining it was untimely, *see* 28 U.S.C. § 2244(d)(1), and that none of the potential grounds for statutory or equitable tolling of the limitations period could save the petition. Seeking to appeal that dismissal, Mr. Francis asked the district court for a certificate of appealability (“COA”), which

* This order is not binding precedent except under the doctrines of law of the case, *res judicata*, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

the court denied. Now before this court, Mr. Francis renews his request for a COA.

We may issue a COA only if the petitioner makes a “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). And where, as here, the district court dismisses a § 2254 petition on procedural grounds, we may issue a COA only if “jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). We conclude, however, that no reasonable jurist would debate the district court’s holding that Mr. Francis’s petition is time-barred, and for substantially the same reasons given by the district court. Accordingly, we deny Mr. Francis’s application for a COA and dismiss this appeal. We also deny his motion for leave to proceed *in forma pauperis* and his “Motion to Consider Designation of Record.”

ENTERED FOR THE COURT

Neil M. Gorsuch
Circuit Judge