

May 14, 2013

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

ERICK THURMAN,
Petitioner–Appellant,
v.
TERRY MARTIN, Warden,
Respondent–Appellee.

No. 13-5015
(D.C. No. 4:11-CV-00070-TCK-TLW)
(N.D. Okla.)

ORDER DENYING CERTIFICATE OF APPEALABILITY*

Before **LUCERO, McKAY** and **MURPHY**, Circuit Judges.

Petitioner, a state prisoner proceeding pro se, seeks a certificate of appealability to appeal the district court’s denial of his § 2254 habeas petition. Petitioner entered a blind plea of guilty to a charge of assault and battery with a deadly weapon and was sentenced to twenty-five years’ imprisonment. Petitioner subsequently filed a motion to withdraw his plea of guilty. After the trial court conducted a hearing, it denied Petitioner’s motion. Petitioner then filed a petition for writ of certiorari at the Oklahoma Court of Criminal Appeals, which was denied, and an application for post-conviction relief in the trial court, which was also denied. The OCCA affirmed the trial court’s denial of post-conviction

* This order is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel.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

relief. Petitioner then filed the instant § 2254 habeas petition.

In his federal habeas petition, Petitioner raised three grounds of error, each of which had been presented and rejected in the state court proceedings. Petitioner argued: (1) he received ineffective assistance of counsel; (2) his plea of guilty was not voluntary, knowing, and intelligent; and (3) he received an excessive sentence. The district court concluded the state court had not unreasonably applied Supreme Court precedent in rejecting these claims, and accordingly denied the petition for relief under 28 U.S.C. § 2254(d)(1).

After thoroughly reviewing the record and Petitioner's filings on appeal, we conclude that reasonable jurists would not debate the district court's denial of habeas relief. *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Accordingly, for substantially the same reasons given by the district court and the state court, we **DENY** Petitioner's request for a certificate of appealability and **DISMISS** the appeal.

ENTERED FOR THE COURT

Monroe G. McKay
Circuit Judge