

June 3, 2014

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

JASON HINZO,

Petitioner - Appellant,

v.

DEREK WILLIAMS, Warden; GARY K.
KING, NEW MEXICO ATTORNEY
GENERAL,

Respondents - Appellees.

No. 13-2228
(D.C. No. 1:13-CV-00228-LH-SMV)
(D. N.M.)

ORDER DENYING CERTIFICATE OF APPEALABILITY*

Before **HARTZ, McKAY**, and **MATHESON**, Circuit Judges.

This is a pro se § 2254 proceeding. Petitioner was convicted in New Mexico state court of assaulting a peace officer, flight from arrest, and drug possession. He was found to be an habitual offender and sentenced to more than twenty years with a portion of the sentence suspended. His attempts at gaining relief from the conviction and sentence through state proceedings were unsuccessful.

Petitioner filed his first § 2254 petition in federal district court in 2009. The

* This order is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel.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

district court dismissed some claims without prejudice and others with prejudice.

Petitioner appealed, and this court reversed and remanded with instructions. *Hinzo v. Tapia*, 378 Fed. App'x 857 (10th Cir. 2010). After remand, the district court dismissed the entire proceeding without prejudice.

Petitioner returned to state court with subsequent state habeas petitions. He found no success in state court, however. Petitioner then filed his second § 2254 petition in federal district court, which is the petition underlying this appeal. Respondents filed a motion to dismiss, arguing that the second petition was untimely. After considering Petitioner's objections, the district court adopted the disposition recommended by a magistrate judge, granted Respondents' motion, and dismissed the action with prejudice. The district court specifically denied a request for a Certificate of Appealability. Petitioner appealed. He filed a combined merits brief and an application for COA.

After generously resolving all doubts about tolling in Petitioner's favor, the magistrate judge's recommendation concluded that his second habeas petition should be dismissed with prejudice because it was filed well beyond the one-year limitation for filing a § 2254 petition. Furthermore, the magistrate concluded that Petitioner's case did not warrant equitable tolling.

The complicated procedural history and the tolling arguments are thoroughly set out and resolved in the magistrate judge's report and recommendation and the trial court's order adopting the recommendation. We have no need here to replicate that work. It is enough to say that we have reviewed it step-by-step and conclude reasonable jurists

would not debate the correctness of the conclusions of the magistrate judge and the district court.

The petition for COA is **DENIED** and the appeal **DISMISSED**.

ENTERED FOR THE COURT

Monroe G. McKay
Circuit Judge