

June 10, 2014

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JACK JAMES,

Defendant - Appellant.

No. 13-7071
(D.C. Nos. 6:12-CV-00286-JHP and
6:08-CR-00078-JHP-2)
(E.D. Okla.)

ORDER DENYING CERTIFICATE OF APPEALABILITY*

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

This is a pro se § 2255 proceeding. Appellant Jack James was charged with two counts of being a felon in possession of a firearm in the United States District Court for the Eastern District of Oklahoma. The case went to trial, and the jury acquitted Appellant on count one but found him guilty on count two. The district court sentenced him to 165 months' imprisonment. This court affirmed. *United States v. James*, 418 F. App'x 751 (10th Cir. 2011).

Appellant subsequently filed the 28 U.S.C. § 2255 motion underlying this

* This order is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel.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

proceeding, asserting ineffective assistance of his trial and appellate counsel and violations of his Fifth Amendment due process rights by the prosecuting attorney and the court. The court twice allowed Appellant to amend his motion: to add a fourth claim seeking a reduction in his sentence under *Alleyne v. United States*, 133 S. Ct. 2151 (2013), and a fifth claim attacking the sentence enhancement under *Descamps v. United States*, 133 S. Ct. 2276 (2013). The district court rejected all of Appellant's arguments and denied the motion. The court entered judgment by separate order, and this appeal followed. As part of his opening brief, Appellant filed an application for a certificate of appealability to raise issues on appeal related to the district court's decision not to apply the new constitutional rule articulated in *Alleyne* retroactively to Appellant's § 2255 collateral proceeding.

Having reviewed Appellant's brief, the record, and the district court's decision, we **DENY** the application for a certificate of appealability and **DISMISS** the appeal. No reasonable jurist would find debatable the district court's thorough and well-reasoned Order denying relief on the issues Appellant seeks to raise.

ENTERED FOR THE COURT

Monroe G. McKay
Circuit Judge