

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

November 25, 2014

Elisabeth A. Shumaker
Clerk of Court

RANDY J. RICE,

Petitioner - Appellant,

v.

JANET DOWLING, Warden,

Respondent - Appellee.

No. 14-5079
(D.C. No. 4:13-CV-00737-JED-FHM)
(N.D. Okla.)

ORDER DENYING CERTIFICATE OF APPEALABILITY*

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

Pro se petitioner Randy Rice, imprisoned in Oklahoma for state drug crimes, seeks a certificate of appealability (“COA”) for this court to review the district court’s rulings on the two claims in his request for a writ of habeas corpus under 28 U.S.C. § 2254. *See* 28 U.S.C. § 2253(c)(1)(A) (requiring a COA to appeal “the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court”).

First, the district court dismissed his claim for ineffective assistance of appellate counsel as time-barred under 28 U.S.C. § 2254(d). Second, the court denied his claim

* This order is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

alleging that the state district court considering his post-conviction challenge did not follow Oklahoma Court of Criminal Appeals Rule 5.4(A), which calls for findings of fact and conclusions of law. It said this is not a cognizable federal habeas claim.

Because Mr. Rice's brief does not address either ruling, he has not made "a substantial showing of the denial of a constitutional right," 28 U.S.C. § 2253(c)(2), which he must to obtain a COA, *see Slack v. McDaniel*, 529 U.S. 473, 484 (2000). We therefore deny COA and dismiss this matter.

ENTERED FOR THE COURT

Scott M. Matheson, Jr.
Circuit Judge