

July 6, 2015

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

LAURANCE L. ELNICKI,

Petitioner - Appellant,

v.

STATE OF KANSAS; ATTORNEY
GENERAL OF KANSAS; REX
PRYOR,

Respondents - Appellees.

No. 15-3128
(D.C. No. 5:14-CV-03082-SAC-DJW)
(D. Kan.)

ORDER DENYING CERTIFICATE OF APPEALABILITY*

Before **GORSUCH, McKAY, and BACHARACH**, Circuit Judges.

After Laurance Elnicki was convicted in state court for several state law kidnapping and theft crimes, he filed a state habeas petition. In it, he claimed that his trial attorney rendered constitutionally ineffective assistance by failing to inform him of his constitutional right to testify at trial — and even refusing to allow him to testify. *See Strickland v. Washington*, 466 U.S. 668, 686 (1984)

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel.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.

(recognizing the right to effective assistance of counsel); *Rock v. Arkansas*, 483 U.S. 44, 51-52 (1987) (recognizing a criminal defendant's right to testify at trial). At an evidentiary hearing on this petition, Mr. Elnicki's trial counsel stated that he "absolutely" informed Mr. Elnicki of his rights and confirmed that the final decision to testify rested with Mr. Elnicki. Testimony from Mr. Elnicki and his wife and mother, on the other hand, sought to rebut that account. In the end, the court found the attorney's testimony more credible, a finding the Kansas Court of Appeals affirmed. *See Elnicki v. State*, 301 P.3d 788, slip op. at 7 (Kan. Ct. App. May 17, 2013) (per curiam) (unpublished table decision).

Unsatisfied with the result in state court, Mr. Elnicki turned to federal district court, renewing his habeas application there. But the district court saw nothing unreasonable in the state court's credibility determination and accordingly found itself obliged to deny relief as well under 28 U.S.C. § 2254(d)(2). Neither can we, as we must to permit further review, say this decision was "debatable." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Accordingly, the application for a certificate of appealability is denied and this appeal is dismissed. *See* 28 U.S.C. § 2253(c). Mr. Elnicki's motion to proceed in forma pauperis is also denied, and he is reminded of his obligation to pay the filing fee in full.

ENTERED FOR THE COURT

Neil M. Gorsuch
Circuit Judge