

FILED

**United States Court of Appeals
Tenth Circuit**

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

August 5, 2015

**Elisabeth A. Shumaker
Clerk of Court**

IRA MINER,

Petitioner-Appellant,

v.

JAMES FALK, THE ATTORNEY
GENERAL OF THE STATE OF
COLORADO,

Respondents-Appellees.

No. 15-1152

(D.C. No. 1:13-CV-03102-WJM)

(D. Colorado)

ORDER

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

Mr. Ira Miner was convicted in state court of attempted first-degree murder, first-degree assault, and robbery. After unsuccessfully appealing in state court, Mr. Miner went to federal court, seeking a writ of habeas corpus. The district court denied relief, and Mr. Miner wants to appeal. To do so, he needs a certificate of appealability and leave to proceed in forma pauperis. We deny the certificate, but grant leave to proceed in forma pauperis.

I. Certificate of Appealability

We start with the request for a certificate of appealability.

A. Standard for a Certificate of Appealability

A certificate of appealability is necessary for Mr. Miner to appeal. *Miller-El v. Cockrell*, 537 U.S. 322, 335-36 (2003); *United States v. Parker*, 720 F.3d 781, 785 (10th Cir. 2013). We will issue a certificate only when the applicant makes “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2) (2012). An applicant must demonstrate that “reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were ‘adequate to deserve encouragement to proceed further.’” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983)), *superseded by statute*, Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214 (1996), *as recognized in Slack*, 529 U.S. at 483-84).

B. Habeas Claims

Mr. Miner argues that the district court should not have rejected his claims involving use of post-arrest statements, prosecutorial misconduct, procedural irregularities in a hearing on jury misconduct, and ineffective assistance of counsel. The state appeals court rejected these claims on the merits. Thus, Mr. Miner had to show that the state appellate decision was

contrary to, or an unreasonable application of, clearly established federal law. 28 U.S.C. § 2254(d)(1).

The federal district court denied habeas relief, thoroughly explaining why Mr. Miner could not show that the state appellate decision had conflicted with, or unreasonably applied, clearly established federal law. We agree with that explanation and do not believe any reasonable jurist could regard the habeas claims as reasonably debatable. As a result, we decline to issue a certificate of appeal. And in the absence of the certificate, we must dismiss the appeal.

II. In Forma Pauperis

Though we dismiss the appeal, we grant leave to proceed in forma pauperis because Mr. Miner cannot afford the filing fee.

Entered for the Court

Robert E. Bacharach
Circuit Judge