

FILED

**United States Court of Appeals
Tenth Circuit**

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

March 15, 2016

**Elisabeth A. Shumaker
Clerk of Court**

WADE ALLEN EDWARDS,

Petitioner-Appellant,

v.

MIKE ADDISON, Warden,

Respondent-Appellee.

No. 15-7058

(D.C.No. 6:07-CV-274-FHS-KEW)

(E.D. Okla.)

**ORDER DENYING A CERTIFICATE OF APPEALABILITY
AND DISMISSING THE APPEAL**

Before **LUCERO, MATHERSON, and BACHARACH**, Circuit Judges.

Petitioner-Appellant Wade Allen Edwards, a state inmate appearing pro se, unsuccessfully sought habeas relief in the district court and our court. He then moved to alter or amend the judgment, arguing that the court erred in considering his habeas claim. The district court denied the motion, and Mr. Edwards wants to appeal. To do so, he must justify a certificate of appealability. 28 U.S.C. § 2253(c)(1)(B). This certificate is available only if Mr. Edwards shows that reasonable jurists could find the district court's ruling debatable or wrong. *Laurson v. Leyba*, 507 F.3d 1230, 1232 (10th Cir. 2007). We do not regard the district court's ruling as

debatable or wrong. As a result, we decline to issue a certificate of appealability.

In part, Mr. Edwards argues that the district court should not have treated the motion as a second or successive habeas petition. Mr. Edwards is correct, but this error has already been corrected. We have already reversed the district court for treating the motion as a second or successive habeas petition; and on remand, the district court denied the motion to vacate without recharacterizing the motion.

Mr. Edwards also argues that his counsel was ineffective. But the district court did not reach the merits, holding that the judgment was not void and that the motion was untimely. Mr. Edwards does not challenge the timeliness ruling. As a result, no reasonable jurist could reverse even if he or she agreed with Mr. Edwards that his attorney was ineffective. The jurist would first have to grapple with the district court's ruling on timeliness, and Mr. Edwards does not question that ruling. As a result, we decline to issue the certificate of appealability and dismiss the appeal.

Entered for the Court

Robert E. Bacharach
Circuit Judge