FILED
United States Court of Appeals
Tenth Circuit

April 1, 2016

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

LAWRENCE MILTON CROSS,

Petitioner - Appellant,

v.

CARL BEAR, Warden,

Respondent - Appellee.

No. 15-6224
(D.C. No. 5:15-CV-00133-D)
(W.D. Okla.)

ORDER DENYING CERTIFICATE OF APPEALABILITY*

Before **KELLY**, **LUCERO**, and **HOLMES**, Circuit Judges.

Petitioner Lawrence Milton Cross, a state prisoner proceeding pro se, seeks a certificate of appealability (COA) to appeal the district court's dismissal of his 28 U.S.C. § 2254 petition as an unauthorized second or successive habeas petition. We deny a COA and dismiss the matter.

Mr. Cross pled guilty in Oklahoma state court in 2010 to several drug trafficking offenses. He tried unsuccessfully to withdraw his plea and was denied relief on appeal to the Oklahoma Court of Criminal Appeals. He then sought habeas relief in federal court under 28 U.S.C. § 2254, arguing that his plea was not knowing

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* This order is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel.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

and voluntary. The district court denied his petition and this court denied a COA. *See Cross v. Franklin*, 520 F. App'x 671, 672 (10th Cir. 2013). Thereafter Mr. Cross returned to state court and filed a motion for post-conviction relief raising additional challenges to his conviction and sentence. Once again, he was denied relief and once again, he returned to federal court. He filed his current § 2254 habeas petition in January 2015 raising the claims he had unsuccessfully raised in his state post-conviction motion. The district court concluded that this petition was second or successive. Because Mr. Cross had not obtained permission from this court before filing it, *see* 28 U.S.C. § 2244(b)(2), (3), the court dismissed it for lack of jurisdiction, *see In re Cline*, 531 F.3d 1249, 1252 (10th Cir. 2008) (per curiam).

To appeal the district court's dismissal, Mr. Cross must first obtain a COA under 28 U.S.C. § 2253(c)(1)(A). *See Miller-El v. Cockrell*, 537 U.S. 322, 335-36 (2003). Because the district court's dismissal rests on procedural grounds, Mr. Cross must show both "that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling," *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

We conclude that Mr. Cross has not made the required showing. He makes no real argument before this court that his habeas petition is not second or successive. And our review of the record convinces us that it is not debatable that his § 2254

petition is second or successive or that the district court had no jurisdiction to consider it, absent prior circuit authorization.

We therefore deny Mr. Cross's application for a COA. We grant his motion to proceed on appeal without the prepayment of fees or costs and remind him that he is obligated to make monthly payments until the costs and fees are paid in full.

Entered for the Court

ELISABETH A. SHUMAKER, Clerk