

UNITED STATES COURT OF APPEALS July 19, 2016

TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

BILLY GLENN,

Petitioner - Appellant,

v.

TRACY McCOLLUM, Warden,

Respondent - Appellee.

No. 16-5044
(D.C. No. 4:13-CV-00350-CVE-FHM)
(N.D. Okla.)

ORDER
DENYING CERTIFICATE OF APPEALABILITY

Before **KELLY, McKAY, and MORITZ**, Circuit Judges.

Petitioner-Appellant Billy Glenn, a state inmate appearing pro se, seeks to appeal from the district court’s denial of his petition for writ of habeas corpus, 28 U.S.C. § 2254. See Glenn v. McCollum, No. 13-CV-0350-CVE-FHM, 2016 WL 1599486 (N.D. Okla. Apr. 20, 2016). Because we determine that Mr. Glenn has failed to show that reasonable jurists would find it debatable whether the district court was correct in either its substantive analysis or its procedural rulings, see Slack v. McDaniel, 529 U.S. 473, 484 (2000), we deny him a certificate of appealability (“COA”) and dismiss the appeal.

Mr. Glenn was convicted, after a jury trial, of the second-degree murder of his wife Kimberly Smith. He was sentenced to 18 years’ imprisonment and

ordered to pay a \$5,000 fine. The judgment and sentence were affirmed on direct appeal by the Oklahoma Court of Criminal Appeals (OCCA). II R. 114 (ECF No. 12-4). His application for post-conviction relief was denied by the state district court and that denial was affirmed on appeal by the OCCA. Id. at 252 (ECF No. 12-11). Mr. Glenn then sought federal habeas relief on 12 grounds, and the district court denied his petition. Glenn, 2016 WL 1599486. The district court declined to stay the matter so Mr. Glenn could exhaust a new claim of prosecutorial misconduct in state court, finding no good cause for a failure to exhaust and the claim time-barred. It then determined that several other claims were unexhausted, but found them to be meritless. It resolved grounds 1, 2, and 12 on the merits applying appropriate deference to state court rulings, 28 U.S.C. § 2254(d); grounds 3–11 were procedurally barred.

We have carefully reviewed the underlying record and deny a COA because the district court's rulings on the various claims are not reasonably debatable. Although the OCCA determined that the failure to instruct on voluntariness and corroboration regarding Mr. Glenn's statement was plain error, the federal district court correctly concluded that there was no substantial or injurious effect on the verdict given other indicia of voluntariness. Insofar as ineffective assistance of trial counsel, the federal district court correctly applied the appropriate degree of deference.

We DENY a COA and DISMISS the appeal. All pending motions are denied.

Entered for the Court

Paul J. Kelly, Jr.
Circuit Judge