FILED
United States Court of Appeals
Tenth Circuit

January 8, 2008

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

FRANK A. ALVEY,

Petitioner - Appellant,

v.

JAMES JANECKA, Warden; ATTORNEY GENERAL FOR THE STATE OF NEW MEXICO,

Respondents - Appellees.

No. 07-2088

(D. New Mex.)

(D.C. No. 2:06-CV-00446-RB-WPL)

ORDER DENYING CERTIFICATE OF APPEALABILITY AND DISMISSING APPEAL

Before **KELLY**, **MURPHY**, and **O'BRIEN**, Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in 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.

Frank Alvey was convicted by a jury of multiple counts of child sexual abuse and related crimes. Having exhausted his state remedies, he filed a petition for habeas corpus pursuant to 28 U.S.C. § 2254, raising numerous claims of error primarily based on ineffective assistance of counsel. The magistrate judge, in a

through report, recommended Alvey's claims be denied.

Alvey filed objections to the report. The district court characterized Alvey's objections as "primarily rephras[ing] the arguments already addressed by the magistrate judge." (R. Doc. 43 at 1.) Applying a de novo review of the magistrate judge's recommendations and Alvey's objections, the district court construed "the objections to be without merit." (*Id.*) It denied Alvey's application for habeas relief, his motion for an evidentiary hearing and his subsequent request for a Certificate of Appealability (COA).

Appearing pro se[1] and *in forma pauperis*, Alvey renews his request for a COA to this Court. *See* 28 U.S.C. § 2253(c)(1)(A); FED. R. APP. P. 22(b)(1). A COA is a jurisdictional prerequisite to our review. *Miller-El v. Cockrell,* 537 U.S. 322, 336 (2003). We agree "[a]n evidentiary hearing is not required because Alvey's claims can be resolved on the basis of the record. *See Parker v. Scott*, F.3d 1302, 1324 (10th Cir. (2005)" (R. Doc. 43. at 2.) Alvey's brief is a reiteration of the ineffective assistance of trial counsel claims reviewed and addressed in the magistrate judge's proposed findings which were adopted by the district court. We see no need to repeat those well-reasoned decisions.

The magistrate judge's recommendation and subsequent district court's dismissal were clearly, concisely and correctly stated. Jurists of reason would not

[1] We liberally construe pro se pleadings. *See Ledbetter v. City of Topeka, Kan.*, 317 F.3d 1183, 1187 (10th Cir. 2003).

disagree with the result. *Miller-El v. Cockrell,* 537 U.S. 322, 336 (2003). After careful review, we agree "[a]n evidentiary hearing is not required because Alvey's claims can be resolved on the basis of the record. *See Parker v. Scott*, F.3d 1302, 1324 (10th Cir. (2005)" (R. Doc. 43. at 2.)

We **DENY** Alvey's request for COA and **DISMISS** his putative appeal. Because his appeal is being denied, no substantive relief can be granted.

FOR THE COURT:

Terrence L. O'Brien
United States Circuit Judge