

February 6, 2008

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

DELFINO ORTEGA,

Petitioner-Appellant,

v.

RON LEIBA, WARDEN, A.V.C.F.,
and THE ATTORNEY GENERAL OF
THE STATE OF COLORADO,

Respondent-Appellee.

No. 07-1069
(D.C. No. 05-cv-01913-EWN-MEH)
(D. Colo.)

ORDER DENYING CERTIFICATE OF APPEALABILITY*

Before **BRISCOE, EBEL**, and **MCCONNELL**, Circuit Judges.

Petitioner-Appellant Delfino Ortega requests a certificate of appealability ("COA"), see 28 U.S.C. § 2253(c), that would enable him to appeal the district court's decision denying him habeas relief, see 28 U.S.C. § 2254, from his Colorado conviction for first degree murder. In his habeas petition, Ortega raises several issues with respect to his trial on the murder charge: (1) whether

* This order is not binding precedent except under the doctrines of law of the case, res judicata and collateral estoppel.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

polygraph evidence was erroneously admitted; (2) whether hearsay evidence was improperly admitted under the co-conspirator exception; (3) whether two counts of murder were erroneously not severed; (4) whether the jury was improperly instructed concerning the burden of proof; and (5) whether a prosecution witness was erroneously allowed to testify under the guise of total immunity without proper establishment under the statutory guidelines.

Ortega will be entitled to a COA if he can make "a substantial showing of the denial of a constitutional right." 28. U.S.C. § 2253(c)(2). He can make such a showing by establishing 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, 483-84 (2000) (quotations omitted). For substantially the same reasons stated in the district court's order and memorandum, we conclude Ortega has failed to make an adequate showing in this case. We, therefore, DENY Ortega's motion for a COA and DISMISS this appeal.

ENTERED FOR THE COURT

David M. Ebel
Circuit Judge