

February 16, 2010

UNITED STATES COURT OF APPEALS

Elisabeth A. Shumaker
Clerk of Court

TENTH CIRCUIT

JERRY L. MASKE,

Petitioner-Appellant,

v.

MARY CHAPPELL,

Respondent-Appellee.

No. 09-1538

(D. of Colo.)

(D.C. No. 09-cv-2754-ZLW)

ORDER DENYING CERTIFICATE OF APPEALABILITY*

Before **HARTZ, ANDERSON, and TYMKOVICH**, Circuit Judges.**

This appeal arises out of multiple case filings in district court for a Writ of Habeas Corpus under 28 U.S.C. § 2254. Petitioner Jerry Maske is a frequent filer in district court and is subject to filing restrictions. Because Maske failed to follow filing requirements, the district court dismissed the case without prejudice.

Maske now requests a certificate of appealability (COA) to pursue an appeal. *See* 28 U.S.C. § 2253(c)(1)(A) (requiring a COA to appeal a denial of a

* This order is not binding precedent except under the doctrines of law of the case, *res judicata* and *collateral estoppel*.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

** After examining the briefs and the appellate record, this three-judge panel has determined unanimously that oral argument would not be of material assistance in the determination of this appeal. *See* Fed. R. App. P. 34(a); 10th Cir. R. 34.1(G). The cause is therefore ordered submitted without oral argument.

habeas application). He makes the same arguments he made in *Maske v. Murphy*, No. 09-1536, (10th Cir. Feb. 16, 2010). For the same reasons set forth in that case, we DENY the application for a COA.

Because his application for a COA is frivolous, we DENY his request to proceed *in forma pauperis*.

ENTERED FOR THE COURT

Timothy M. Tymkovich
Circuit Judge