

June 7, 2010

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

LINDA HENNING,

Petitioner-Appellant,

v.

ALLEN COOPER, Warden;
ATTORNEY GENERAL OF THE
STATE OF NEW MEXICO,

Respondents-Appellees.

No. 09-2303
(Case No. 08-CV-00328-RB-LFG)
(D.N.M.)

ORDER*

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

Petitioner, a *pro se* state prisoner, seeks a certificate of appealability to appeal the district court's denial of her § 2254 habeas petition. Petitioner was convicted by a jury of felony murder, kidnapping, conspiracy to commit kidnapping, criminal solicitation, perjury, tampering with evidence, and conspiracy to commit tampering with evidence. She was sentenced to a total sentence of life plus 43.5 years. On appeal, her perjury convictions were reversed for lack of adequate notice, but her other convictions were affirmed. Petitioner's

* This order is not binding precedent, except under the doctrines of law of the case, *res judicata*, and collateral estoppel.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

state habeas petition was denied by the state district court, and the state supreme court denied her petition for certiorari.

Petitioner then filed the instant federal habeas petition. In it, she asserted four broad grounds for relief: (1) denial of due process and a fair trial based on the state courts' actions, (2) ineffective assistance of counsel, (3) prosecutorial misconduct, and (4) insufficiency of the evidence. Each of these broad claims included a large number of related and unrelated subclaims. The magistrate judge individually considered each of the approximately 219 separate claims he identified in the petition. He concluded that several claims had not been exhausted in the state court but numerous other claims had been exhausted and should be considered on the merits. The district court independently scoured the record and dismissed approximately seventy claims for failure to exhaust. The magistrate judge then considered the merits of each exhausted claim, ultimately recommending dismissal of each on the merits. After conducting a de novo review of the record and considering Petitioner's objections, the district court adopted the magistrate judge's findings and recommended disposition. The district court denied Petitioner's request for an evidentiary hearing, holding there was no factual conflict material to resolution of the case.

After an exhaustive review of Petitioner's filings and the extensive record on appeal, we conclude that reasonable jurists would not debate the district court's resolution of any of Petitioner's claims, either on procedural grounds or

on the merits. *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000). We, likewise, see no error in the district court's rejection of Petitioner's request for an evidentiary hearing. For substantially the same reasons set forth by the magistrate judge and district court in their admirably thorough rulings in this case, we **DENY** Petitioner's request for a certificate of appealability and **DISMISS** the appeal. We **GRANT** Petitioner's motion for leave to proceed *in forma pauperis*. All other pending motions are **DENIED**.

Entered for the Court

Monroe G. McKay
Circuit Judge