

August 24, 2010

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOHNNY SCOTT WARREN,

Defendant - Appellant.

No. 10-1269

(D. Colorado)

(D.C. No. 10-CV-01231-CMA and
1:07-CR-00354-CMA-1)

**ORDER DENYING
CERTIFICATE OF APPEALABILITY***

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

This is a *pro se* 28 U.S.C. § 2255 appeal. Mr. Warren was convicted on federal drug and firearm charges and sentenced to 240 months of imprisonment. His conviction was affirmed by this court on direct appeal. *United States v. Warren*, 566 F.3d 1211 (10th Cir. 2009). Mr. Warren then sought § 2255 relief, asserting that the district court lacked jurisdiction over his criminal case because there was no indictment or waiver of indictment and that he received ineffective

* This order is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel.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

assistance of counsel because his attorney failed to investigate or challenge the court's jurisdiction. On June 8, 2010, the district court denied the § 2255 motion, ruling that an indictment had, in fact, been filed in Mr. Warren's criminal case. The court also denied Mr. Warren's request for a certificate of appealability. Mr. Warren now has filed an application for COA with this court.

Appellant's application to this court for a certificate of appealability is **DENIED**, and the appeal is **DISMISSED**. The record supports the trial court's finding that an indictment was in fact filed on August 22, 2007, and reasonable jurists would not debate the correctness of the trial court's findings and order. *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

ENTERED FOR THE COURT

Monroe G. McKay
Circuit Judge