

June 20, 2011

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

BOBBY M. ELLIS,

Petitioner-Appellant,

v.

WARDEN DAVID PARKER,

Respondent-Appellee.

No. 11-6091
(D.C. No. 5:10-CV-00498-W)
(W.D. Okla.)

ORDER DENYING CERTIFICATE OF APPEALABILITY*

Before **LUCERO, ANDERSON, and GORSUCH**, Circuit Judges.

An Oklahoma jury convicted Bobby M. Ellis of first-degree rape, lewd molestation, and preparing child pornography, a result the Oklahoma Court of Criminal Appeals affirmed. After unsuccessfully seeking state post-conviction relief, Mr. Ellis eventually filed a federal habeas petition under 28 U.S.C. § 2254. The district court, however, dismissed Mr. Ellis's petition after determining it was untimely, *see* 28 U.S.C. § 2244(d)(1), and that none of the potential grounds for statutory or equitable tolling of the limitations period could save the petition.

* This order is not binding precedent except under the doctrines of law of the case, *res judicata*, and collateral estoppel.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

Seeking to appeal that dismissal, Mr. Ellis asked the district court for a certificate of appealability (“COA”), which the court denied. Now before this court, Mr. Ellis renews his request for a COA.

We may issue a COA only if the petitioner makes a “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). And where, as here, the district court dismisses a § 2254 petition on procedural grounds, we may issue a COA only if “jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). We conclude, however, that no reasonable jurist would debate the district court’s holding that Mr. Ellis’s petition is time-barred, and for substantially the same reasons given by the district court. Accordingly, we deny Mr. Ellis’s application for a COA and dismiss this appeal. We also deny his motion for leave to proceed in forma pauperis.

ENTERED FOR THE COURT

Neil M. Gorsuch
Circuit Judge