

October 28, 2011

UNITED STATES COURT OF APPEALS

Elisabeth A. Shumaker
Clerk of Court

TENTH CIRCUIT

AARON EUGENE SMITH,

Petitioner–Appellant,

v.

EDDIE WILSON, Wyoming
Department of Corrections State
Penitentiary Warden; GREGORY A.
PHILLIPS, Wyoming Attorney
General,

Respondents–Appellees.

No. 11-8023

(D.C. No. 2:09-CV-00257-ABJ)

(D. Wyo.)

ORDER DENYING CERTIFICATE OF APPEALABILITY*

Before **O’BRIEN, McKAY, and TYMKOVICH**, Circuit Judges.

Petitioner seeks a certificate of appealability to appeal the district court’s denial of his § 2254 habeas petition. After a jury found him guilty of first degree murder and other weapons charges, Petitioner filed a motion for a new trial based on newly discovered evidence of alleged juror bias. The state district court denied his motion, and the Wyoming Supreme Court affirmed. *See Smith v. State*,

* This order is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel.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

190 P.3d 522 (Wyo. 2008).

To appeal the denial of his habeas petition, Petitioner must obtain a certificate of appealability. *See* 28 U.S.C. § 2253(c)(1). In denying Petitioner's habeas petition, the district court concluded that the Wyoming Supreme Court did not unreasonably apply the law, nor did Petitioner provide clear and convincing evidence that the state court's factual decisions were clearly erroneous. We agree with the district court, and have nothing to add to that court's thorough analysis.

After carefully reviewing Petitioner's brief and the record on appeal, we conclude that reasonable jurists would not debate whether the district court erred in dismissing the petition. *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000). We therefore **DENY** the application for a certificate of appealability and **DISMISS** the appeal.

ENTERED FOR THE COURT

Monroe G. McKay
Circuit Judge