

UNITED STATES COURT OF APPEALS **April 19, 2012**

TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

KENT PROFFIT,

Petitioner - Appellant,

v.

STATE OF WYOMING; WYOMING
DEPARTMENT OF CORRECTIONS
STATE PENITENTIARY WARDEN,
a/k/a Eddie Wilson,

Respondents - Appellees.

No. 12-8000
(D.C. No. 2:11-CV-00179-CAB)
(D. Wyo.)

ORDER DENYING CERTIFICATE OF APPEALABILITY*

Before **KELLY, TYMKOVICH**, and **GORSUCH**, Circuit Judges.

A Wyoming jury convicted Kent Proffit of conspiracy to commit murder, a result the Wyoming Supreme Court affirmed. After unsuccessfully seeking state post-conviction relief, Mr. Proffit eventually filed a federal habeas petition under 28 U.S.C. § 2254. The district court, however, dismissed Mr. Proffit'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

* This order is not binding precedent except under the doctrines of law of the case, *res judicata*, and collateral estoppel.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

could save the petition. Seeking to appeal that dismissal, Mr. Proffit asked the district court for a certificate of appealability (“COA”), which the court denied. Now before this court, Mr. Proffit 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 see no way, however, in which reasonable jurists might debate the district court’s analysis that Mr. Proffit’s petition is time-barred. Accordingly, Mr. Proffit’s application for a COA is denied and this appeal is dismissed.

ENTERED FOR THE COURT

Neil M. Gorsuch
Circuit Judge