

June 11, 2013

UNITED STATES COURT OF APPEALS  
TENTH CIRCUIT

Elisabeth A. Shumaker  
Clerk of Court

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ROBERT MICHAEL ACKER,

Petitioner-Appellant,

v.

WALTER DINWIDDIE, Warden,

Respondent-Appellee.

No. 13-5038

(D.C. No. 4:10-CV-00114-GKF-FHM)

(N.D. Okla.)

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**ORDER DENYING CERTIFICATE OF APPEALABILITY\***

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Before **HARTZ, O'BRIEN**, and **GORSUCH**, Circuit Judges.

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In 2007 an Oklahoma state court convicted Robert Acker on drug, firearms, and other charges, and sentenced him to thirty years' imprisonment. On direct appeal in state court, Mr. Acker pressed six arguments for reversal but to no avail. He then raised the same six arguments in a federal habeas petition under 28 U.S.C. § 2254, with the same result. Now, he requests a certificate of appealability (COA) to contest the district court's ruling.

We discern no ground on which to grant Mr. Acker a COA because he offers us none. Instead, his COA application does no more than list four of the

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\* This order is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel.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

grounds he raised below, without any argument or development. To be sure, it is well-settled that we read a *pro se* litigant's petition with a special solicitude. But we are not his advocates, and we cannot create arguments on his behalf out of whole cloth. It is his burden to show that "reasonable jurists could debate whether (or, for that matter, agree that)" the district court erred, or even just that "the issues presented were adequate to deserve encouragement to proceed further." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (internal quotation marks omitted). Mr. Acker does not even make the attempt.

Neither in any event are we able to detect for ourselves any error in the district court's seventeen-page opinion. The district court carefully considered each argument Mr. Acker raises so briefly before us, and we see no basis for thinking a reasonable jurist could doubt the correctness of the district court's disposition. Mr. Acker's application for a COA is denied and this appeal is dismissed.

ENTERED FOR THE COURT

Neil M. Gorsuch  
Circuit Judge