

UNITED STATES COURT OF APPEALS **April 29, 2014**

TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

WENDEL ROBERT WARDELL, JR.,

Petitioner–Appellant,

v.

EXECUTIVE DIRECTOR, Colorado
Department of Corrections; ARCHIE B.
LONGLEY, Warden; ATTORNEY
GENERAL OF THE STATE OF
COLORADO,

Respondents–Appellees.

No. 13-1339
(D.C. No. 1:13-CV-00037-LTB)
(D. Colo.)

ORDER DENYING CERTIFICATE OF APPEALABILITY*

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

Petitioner Wendel Wardell, a state prisoner proceeding pro se, seeks a certificate of appealability to appeal the district court’s denial of his § 2254 habeas petition. Petitioner filed this § 2254 petition in January 2013 to challenge his 1996 Colorado convictions for theft and forgery. Petitioner’s sentence for these convictions expired when he was released on parole in 2004, and his sentence was fully discharged in 2008. Because Petitioner’s sentence was discharged more than four years before he filed his federal

* This order is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel.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

habeas petition, the district court concluded it lacked jurisdiction to entertain the petition based on the “custody” requirement of § 2254(a). The court dismissed the action for lack of jurisdiction.

Petitioner contends he satisfies the custody requirement because he is currently in custody in a federal prison on a federal sentence that was ordered to run consecutively to any sentence previously imposed. However, the district court clearly explained why this argument is incorrect, with citation to applicable legal authorities. *See, e.g., Brown v. Warden*, 315 F.3d 1268 (10th Cir. 2003) (rejecting essentially the same argument in a similar case). Reasonable jurists would not debate the district court’s resolution of this case. *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

We accordingly **DENY** Petitioner’s request for a certificate of appealability and **DISMISS** the appeal. Petitioner’s motion to proceed *in forma pauperis* on appeal is **GRANTED**.

ENTERED FOR THE COURT

Monroe G. McKay
Circuit Judge