

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

June 21, 2018

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

WARREN DOUGLAS VANN,

Defendant - Appellant.

No. 18-7018
(D.C. No. 6:17-CV-00292-JHP)
(E.D. Okla.)

ORDER AND JUDGMENT*

Before **BRISCOE, HOLMES, and MATHESON**, Circuit Judges.

Defendant-Appellant, Warren Douglas Vann, is in the custody of the Federal Bureau of Prisons. Proceeding *pro se* in the United States District Court for the Eastern District of Oklahoma, Mr. Vann filed a *Motion Under 28 U.S.C. §2255 to Vacate, Set Aside or Correct Sentence by a Person in Federal Custody*. The district court denied Mr. Vann's motion and refused to grant a certificate of appealability ("COA").

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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.

Mr. Vann initiated this appeal, in which he has filed an opening brief that includes a request for a COA. Pursuant to Tenth Circuit Rule 22.1(B), the United States has not filed a response brief. In accordance with 28 U.S.C. § 2253(c), a COA is granted as to whether Mr. Vann is entitled to equitable tolling.

In addition, we VACATE the district court's judgment, and REMAND with instructions for the district court to conduct any further proceedings necessary to determine whether Mr. Vann is entitled to equitable tolling. The Clerk is directed to issue the mandate forthwith.

Entered for the Court

Per Curiam