

UNITED STATES COURT OF APPEALS **September 10, 2019**  
TENTH CIRCUIT  
Elisabeth A. Shumaker  
Clerk of Court

---

ARCHIE LEWIS FRAZIER,  
Petitioner - Appellant,

v.

CASEY HAMILTON, Warden,  
Respondent - Appellee.

No. 19-6064  
(W.D. Okla.)  
(D.C. No. 5:18-CV-00831-D)

---

**ORDER DENYING CERTIFICATE  
OF APPEALABILITY**

---

Before **HOLMES, MURPHY, and CARSON**, Circuit Judges.

---

Proceeding *pro se*, Oklahoma state prisoner Archie Lewis Frazier seeks a certificate of appealability (“COA”) so he can appeal the district court’s denial of the habeas petition he filed pursuant to 28 U.S.C. § 2254. *See* 28 U.S.C. § 2253(c)(1)(A) (providing that no appeal may be taken from a final order disposing of a § 2254 petition unless the petitioner first obtains a COA). Frazier’s motion to proceed *in forma pauperis* on appeal is **granted**.

On June 16, 2017, Frazier entered a guilty plea to nine drug-related charges. One week later, Frazier moved to withdraw his guilty plea but thereafter withdrew the motion. Frazier’s request for state post-conviction relief was

denied. The Oklahoma courts concluded the issues Frazier sought to raise were procedurally defaulted because he failed to raise them in a direct appeal. *See Jones v. State*, 704 P.2d 1138, 1140 (Okla. Crim. App. 1985).

Frazier filed the instant § 2254 habeas petition on August 27, 2018. In his petition, Frazier raised three claims of error: (1) his guilty plea was not knowing and voluntary because his attorney and the trial court erroneously informed him of the minimum sentence for drug trafficking, (2) the sentence imposed for possession of marijuana was excessive, and (3) he was convicted of a crime that was not charged. In a comprehensive Report and Recommendation, a federal magistrate judge concluded all three claims were procedurally defaulted in Oklahoma state court. The magistrate judge, however, recommended denying the claims on the merits. The district court adopted the Report and Recommendation, adjudicating Frazier's claims as follows. As to Frazier's claim that his guilty plea was not knowing and voluntary because he was erroneously informed of the minimum sentence for trafficking in heroin, a narcotic drug, the district court concluded Frazier was correctly advised that the term of imprisonment he faced was ten years. *See Okla. Stat. tit. 63 § 2-101(26)* (2017) (defining "narcotic drug" as including opium and opiates). As to Frazier's claim that the sentence he received for possession of marijuana was excessive, the district court concluded Frazier's conviction was properly classified as a felony conviction and, thus, his

ten-year sentence did not exceed the statutory maximum authorized by Oklahoma law. Frazier also claimed he was convicted of possession of a firearm without being so charged. The district court concluded Frazier was not entitled to habeas relief based on a scrivener's error because the record shows he was actually charged and convicted of possession of a firearm after former felony convictions.

In his appellate brief, Frazier challenges the district court's disposition of his three substantive claims, and also argues the court erred by failing to hold an evidentiary hearing. To be entitled to a COA, Frazier must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To make the requisite showing, he must demonstrate "that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003) (quotations omitted). In evaluating whether Frazier has satisfied his burden, this court undertakes "a preliminary, though not definitive, consideration of the [legal] framework" applicable to each of his claims. *Id.* at 338. Although Frazier need not demonstrate his appeal will succeed to be entitled to a COA, he must "prove something more than the absence of frivolity or the existence of mere good faith." *Id.* (quotations omitted).

This court has reviewed Frazier’s application for a COA and appellate brief, the district court’s Order, the magistrate judge’s Report and Recommendation, and the entire record on appeal pursuant to the framework set out by the Supreme Court in *Miller-El* and concludes Frazier is not entitled to a COA. The district court’s resolution of his claims is not reasonably subject to debate and the claims are not adequate to deserve further proceedings. Because Frazier’s claims were capable of being resolved on the record, the district court did not abuse its discretion by failing to hold an evidentiary hearing. *See Torres v. Mullin*, 317 F.3d 1145, 1161 (10th Cir. 2003).

Because Frazier has not “made a substantial showing of the denial of a constitutional right,” he is not entitled to a COA. 28 U.S.C. § 2253(c)(2). This court **denies** Frazier’s request for a COA and **dismisses** this appeal.

ENTERED FOR THE COURT

Michael R. Murphy  
Circuit Judge