

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

September 30, 2021

Christopher M. Wolpert
Clerk of Court

VICTOR M. LOGAN,

Petitioner - Appellant,

v.

SHANNON MEYER, Warden, Lansing
Correctional Facility; DEREK SCHMIDT,
Kansas Attorney General,

Respondents - Appellees.

No. 20-3218
(D.C. No. 5:18-CV-03177-JTM)
(D. Kansas)

ORDER DENYING CERTIFICATE OF APPEALABILITY*

Before BRISCOE, KELLY, and McHUGH, Circuit Judges.

A Kansas jury convicted Victor Logan of one count of aggravated indecent liberties with a child, two counts of indecent liberties with a child, and one count of lewd and lascivious behavior. The Johnson County District Court sentenced Mr. Logan to 171 months' imprisonment. He directly appealed and collaterally challenged these convictions, but both efforts were unsuccessful.

Mr. Logan then filed an application for relief under 28 U.S.C. § 2254 in the United States District Court for the District of Kansas. His habeas petition stated three grounds

* This order is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel.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 Federal Rule of Appellate Procedure 32.1 and Tenth Circuit Rule 32.1.

for relief: (1) the judge in his collateral challenge was biased against him, (2) trial counsel provided ineffective assistance by not advising him of a plea offer and by not requesting a psychological evaluation of the alleged victims, and (3) the state engaged in prosecutorial misconduct when it urged the jury to believe the alleged victims' statements. The district court denied his application and a certificate of appealability ("COA"). He now requests a COA from this court. We deny his request and dismiss this matter.

We lack jurisdiction to review the denial of a § 2254 petition absent the issuance of a COA. *See* 28 U.S.C. § 2253(c)(1). We may issue a COA "only if the applicant has made a substantial showing of the denial of a constitutional right." *Id.* § 2253(c)(2). This standard requires "a demonstration that . . . includes showing 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.'" *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893, 922 n.4 (1983)). Thus, Mr. Logan must show that the district court's resolution of the constitutional claim was either "debatable or wrong." *Id.*

Mr. Logan seeks a COA on three grounds: (1) a due process violation resulting from various alleged procedural errors during his arrest and trial, (2) a due process violation based on an incorrect charge, as Mr. Logan asserts the alleged victim was not a child, and (3) a Sixth Amendment violation arising from an unlawful and non-speedy jury trial. *See* Aplt. Br. at 8–10. But Mr. Logan argued none of these three grounds to the

district court, and therefore none of the arguments pursued in this appeal have been adjudicated by the district court. These arguments are therefore waived.

“We do not generally consider issues that were not raised before the district court as part of the habeas petition.” *Stouffer v. Trammell*, 738 F.3d 1205, 1221 n. 13 (10th Cir. 2013); *see also Harmon v. Sharp*, 936 F.3d 1044, 1069 (10th Cir. 2019) (refusing to reach claims not raised in a habeas petition before the district court). While this court has discretion to consider waived arguments on appeal, we will not do so here, as Mr. Logan primarily seeks to relitigate factual and evidentiary disputes considered in state court. The Antiterrorism and Effective Death Penalty Act of 1996 governs this appeal and instructs us to “presume factual findings [of a state court] are correct absent clear and convincing evidence to the contrary.” *Sharp*, 936 F.3d at 1050.

For the foregoing reasons we **DENY** Mr. Logan’s request for a COA and **DISMISS** this matter.

Entered for the Court

Carolyn B. McHugh
Circuit Judge