

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

October 4, 2021

Christopher M. Wolpert
Clerk of Court

RICKEY WHITE,

Petitioner - Appellant,

v.

OKLAHOMA COURT OF CRIMINAL
APPEALS; GARY L. LUMPKIN,
Presiding Judge,

Respondents - Appellees.

No. 21-6078
(D.C. No. 5:21-CV-00376-R)
(W.D. Okla.)

ORDER DENYING CERTIFICATE OF APPEALABILITY*

Before **MORITZ, KELLY, and CARSON**, Circuit Judges.

Rickey White, an Oklahoma prisoner proceeding pro se,¹ seeks to appeal the district court’s dismissal of his 28 U.S.C. § 2254 petition. We deny White’s request for a certificate of appealability (COA) and dismiss this matter.

A jury convicted White of first-degree murder and an Oklahoma court sentenced him to life imprisonment. In 1985, the Oklahoma Court of Criminal Appeals affirmed his

* This order is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel.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

¹ Because White appears pro se, we construe his filings liberally but do not serve as his advocate. See *Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 840 (10th Cir. 2005).

conviction and sentence. *See White v. State*, 702 P.2d 1058, 1063 (Okla. Crim. App. 1985). White filed a § 2254 petition in 2003. The district court dismissed the petition as time-barred, and this court denied White’s request for a COA. White filed many habeas petitions and motions for authorization to file second or successive habeas petitions after that. Courts denied or dismissed all of them.

In April 2021, White filed another § 2254 petition in the district court. The district court dismissed the petition for lack of jurisdiction. White seeks to appeal the dismissal.

White must obtain a COA before he can appeal. *See* 28 U.S.C. § 2253(c)(1)(A); *Montez v. McKinna*, 208 F.3d 862, 867 (10th Cir. 2000) (holding “a state prisoner must obtain a COA to appeal the denial of a habeas petition . . . filed pursuant to § 2254 . . . whenever the detention complained of in the petition arises out of process issued by a State court” (brackets and internal quotation marks omitted)). To obtain a COA, White must show “that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right *and* that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (emphasis added). White has not met this burden.

“A district court does not have jurisdiction to address the merits of a second or successive . . . § 2254 claim until this court has granted the required authorization.” *In re Cline*, 531 F.3d 1249, 1251 (10th Cir. 2008) (per curiam). The district court concluded that it lacked jurisdiction to consider White’s petition because it was second or successive and this court had not authorized it. Reasonable jurists could not debate the

correctness of the district court's procedural ruling. We therefore deny White's application for a COA and dismiss this matter.

Entered for the Court

A handwritten signature in black ink, appearing to read 'C. M. Wolpert', with a long horizontal flourish extending to the right.

CHRISTOPHER M. WOLPERT, Clerk