

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

November 3, 2022

Christopher M. Wolpert
Clerk of Court

JAMES MORALES HICKS,

Petitioner - Appellant,

v.

BILL ELDER; COMMANDER
GILLESPIE,

Respondents - Appellees.

No. 22-1165
(D.C. No. 1:22-CV-00654-LTB-GPG)
(D. Colo.)

ORDER DENYING A CERTIFICATE OF APPEALABILITY

Before **BACHARACH**, **BALDOCK**, and **McHUGH**, Circuit Judges.

The State of Colorado had charged Mr. James Morales Hicks in multiple criminal cases. While waiting for trial, Mr. Hicks petitioned for habeas relief. The district court denied habeas relief, and Mr. Hicks wants to appeal. To do so, he needs a certificate of appealability. 28 U.S.C. § 2253(c)(1)(A).

1. Request for a Certificate of Appealability

We can issue a certificate only upon the presentation of a reasonably debatable appeal point. *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003).

The district court identified four defects in the habeas petition:

(1) Mr. Hicks failed to allege facts showing a constitutional violation;

(2) Mr. Hicks’s request for pretrial release was not an available remedy in this habeas action; (3) abstention would have been preferable to intervention in the state-court proceeding; and (4) Mr. Hicks had failed to exhaust state-court remedies.

Mr. Hicks’s threshold burden was to “explain to us why the district court’s decision was wrong.” *Nixon v City & Cnty. of Denver*, 784 F.3d 1364, 1366 (10th Cir. 2015). Mr. Hicks doesn’t satisfy that burden because he hasn’t mentioned or challenged the district court’s four reasons for denying his request for habeas relief. Because Mr. Hicks does not explain why the district court’s reasoning is wrong, we deny his request for a certificate of appealability.

2. Request for Leave to Proceed in Forma Pauperis

Because Mr. Hicks cannot afford the filing fee, we grant leave to proceed in forma pauperis.

3. Request for a Stay

After appealing, Mr. Hicks requested a stay while the district court considered a motion entitled “Motion to Discharge by Recourse to Law.” But the district court had denied this motion before Mr. Hicks requested the stay. So we deny this request for a stay based on mootness.

Entered for the Court

Robert E. Bacharach
Circuit Judge