FILED
United States Court of Appeals
Tenth Circuit

October 3, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

CHATHA TATUM,

Petitioner - Appellant,

v.

TOMMY WILLIAMS,

Respondent - Appellee.

No. 22-3280
(D.C. No. 5:19-CV-03228-JWL-JPO)
(D. Kan.)

ORDER DENYING CERTIFICATE OF APPEALABILITY*

Before **HOLMES**, Chief Judge, **HARTZ** and **PHILLIPS**, Circuit Judges.

Chatha Tatum, a Kansas prisoner proceeding pro se,[1] requests a certificate of appealability (COA) to appeal the district court's order denying him relief under 28 U.S.C. § 2254. We deny a COA and dismiss this matter.

BACKGROUND

In 2004 a jury in Wyandotte County, Kansas, convicted Mr. Tatum of first-degree murder and attempted first-degree murder. The facts of the underlying crime,

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* This order is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel.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 Mr. Tatum proceeds pro se, we construe his arguments liberally, but we "cannot take on the responsibility of serving as [his] attorney in constructing arguments and searching the record." *Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 840 (10th Cir. 2005).

investigation, and trial are set forth in the district court's order, and we need not restate them here. The Kansas Supreme Court affirmed the conviction. *See State v. Tatum*, 135 P.3d 1088, 1113 (Kan. 2006).

Mr. Tatum sought postconviction relief twice in state court, filing motions under Kan. Stat. Ann. § 60-1507. The state district court denied each motion, and the Kansas Court of Appeals affirmed each denial. *See Tatum v. State*, No. 110,299, 2015 WL 4486775, at *13 (Kan. Ct. App. July 17, 2015) (affirming first denial of § 60-1507 petition), *review denied* (Kan. Feb. 18, 2016); *Tatum v. State*, No. 117,062, 2018 WL 4039222, at *7 (Kan. Ct. App. Aug. 24, 2018) (affirming second denial of § 60-1507 petition), *review denied* (Kan. Sept. 27, 2019).

Mr. Tatum filed an application for relief under § 2254. The district court initially denied the application as time-barred, but a panel of this court concluded that the application was timely under the prison mailbox rule and reversed and remanded for consideration of the application on the merits. *See Tatum v. Schnurr*, No. 20-3188, 2021 WL 4191939, at *1, *4 (10th Cir. Sept. 15, 2021). On remand the district court denied Mr. Tatum's application, denied his motion to alter or amend the judgment, and denied a COA. This application for a COA followed.

DISCUSSION

A COA "is a jurisdictional prerequisite" to appeal the denial of a § 2254 petition. *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003). "Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from . . . the final order in a habeas corpus proceeding in which the detention complained

of arises out of process issued by a State court." 28 U.S.C. § 2253(c)(1)(A); *see also id.* § 2253(c)(2) ("A [COA] may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right."). To obtain a COA, Mr. Tatum must "show[] that reasonable jurists could debate whether . . . 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) (internal quotation marks omitted).

Mr. Tatum seeks a COA to raise two arguments on appeal. He argues that prosecutorial misconduct occurred in connection with the testimony of witness Antonio Ford; and he asserts his trial counsel was ineffective for failing to call certain alibi witnesses and for failing to perform an adequate investigation before trial. After consideration of Mr. Tatum's Combined Opening Brief and Application for a COA and the record on appeal, we conclude that reasonable jurists could not debate whether Mr. Tatum's claims should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further. Among other things, he made no showing of government coercion to prevent Ford's testimony and he made no showing that the alleged alibi witnesses could provide favorable testimony. For substantially the same reasons given by the district court in denying relief under § 2254, we deny Mr. Tatum's request for a COA.

CONCLUSION

We grant Mr. Tatum's "Motion to Supplement the (COA)." We have considered the arguments raised therein in conjunction with the arguments in his original application for COA. We deny a COA and dismiss this matter.

Entered for the Court

Harris L Hartz
Circuit Judge