

FILED
United States Court of Appeals
Tenth Circuit

MAY 1 1990

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

ROBERT L. HOECKER
Clerk

DONALD GEE,
Petitioner-Appellant,
v.
ATTORNEY GENERAL OF THE STATE
OF WYOMING,
Respondent-Appellee.

No. 89-8089
(D.C. No. C89-015K)
(District of Wyoming)

ORDER AND JUDGMENT*

Before McKAY, ANDERSON, and TACHA, Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. The case is therefore ordered submitted without oral argument.

This matter is a petition for writ of habeas corpus attacking a state sentence for aggravated robbery and unauthorized use of an automobile. Petitioner raises five claims of error: (1) waiver by the State of Wyoming of jurisdiction over the petitioner

* This order and judgment has no precedential value and shall not be cited, or used by any court within the Tenth Circuit, except for purposes of establishing the doctrines of the law of the case, res judicata, or collateral estoppel. 10th Cir. R. 36.3.

through relinquishment of his person to another jurisdiction; (2) denial of due process and a fair trial when he was forced to wear leg irons and a leg cast throughout his jury trial; (3) denial of the constitutional right to self-representation; (4) double jeopardy; and (5) ineffective assistance of counsel prior to trial, during trial, and on direct appeal.

These issues were first raised before the sentencing judge in a petition to vacate and set aside the judgment and sentence imposed. That relief was denied. Subsequently, his appeal to the Wyoming Supreme Court was dismissed on adequate procedural grounds. We agree with the trial court that petitioner has not made an adequate showing of cause and prejudice for his failure to exhaust his state remedies before the Wyoming Supreme Court. We agree with the trial court that his failure timely to bring the matter to the attention of the Wyoming Supreme Court bars federal habeas corpus consideration. Brown v. Allen, 344 U.S. 443, reh'g denied, 445 U.S. 946 (1953).

Appellant's request for a certificate of probable cause is granted. Appellant's motion for leave to proceed without prepayment of fees is also granted. The trial court's order dismissing the petition for habeas corpus is AFFIRMED. The mandate shall issue forthwith.

Entered for the Court

Monroe G. McKay
Circuit Judge