

FILED

United States Court of Appeals
Tenth Circuit

JAN 29 1991

ROBERT L. HOECKER
Clerk

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

ORLANDO MARTINEZ,

Petitioner-Appellant,

v.

ANTHONY BELASKI; THE ATTORNEY
GENERAL OF THE STATE OF COLORADO,

Respondents-Appellees.

No. 90-1277
(D. C. No. 90-Z-393)
(D. Colo.)

ORDER AND JUDGMENT*

Before ANDERSON, TACHA, and BRORBY, 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 cause is therefore ordered submitted without oral argument.

* 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.

Mr. Martinez appeals, pro se, the dismissal of his petition for habeas corpus, which he also filed pro se pursuant to 28 U.S.C. § 2254.

Mr. Martinez pled guilty in the state court of Colorado to the crime of possession of a controlled substance. He filed no direct appeal and contends he tried to appeal but "could not provide the papers because the lower court would not provide them to me." Mr. Martinez failed to file any type of request for post-conviction relief with the state court and did not offer any explanation for this failure.

The United States District Court dismissed Mr. Martinez's petition for habeas relief holding that he failed to exhaust his state remedies.

On appeal to this court, Mr. Martinez fails to address the reasoning behind the order of the United States District Court and instead argues the alleged constitutional infirmities of his state court conviction.

A state prisoner is required to exhaust state remedies before seeking habeas review in the federal courts. 28 U.S.C. § 2254(b); Rose v. Lundy, 455 U.S. 509 (1981).

Because Mr. Martinez has not exhausted the remedies available in the courts of Colorado, the judgment of the United States District Court is **AFFIRMED**.

The mandate shall issue forthwith.

Entered for the Court:

WADE BRORBY
Circuit Judge