

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

FILED
United States Court of Appeals
Tenth Circuit

FEB 07 1991

DONALD R. MAGHE,
Petitioner-Appellant,

VS.

R. MICHAEL CODY,
Respondent-Appellee.

No. 90-7047
(D.C. No. CIV-90-40-C)
(E.D. Okla.)

ROBERT L. HOECKER
Clerk

ORDER AND JUDGMENT*

Before LOGAN, MOORE and BALDOCK, Circuit Judges.**

Petitioner-appellant Donald R. Maghe appeals pro se from the district court's denial of a certificate of probable cause required by 28 U.S.C. § 2253. Petitioner was convicted of murder in the first degree in the District Court of Okmulgee County, Oklahoma, and was sentenced in 1979 to imprisonment for "the remainder of his life." Rec. vol. I, doc. 1 at 6. He asserts that this sentence is unconstitutionally excessive because it is

* 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.

** 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 therefore is ordered submitted without oral argument.

more severe than the "imprisonment for life" sentence recommended by the jury and set forth in the Oklahoma sentencing statute for first degree murder. Okla. Stat. Ann. tit. 21, § 701.9 (West 1979).

Even construing the record, briefs and the petitioner's pro se pleadings liberally as required under Haines v. Kerner, 404 U.S. 519 (1972), we find no legal basis for petitioner's argument. The difference between petitioner's sentence of imprisonment for "the remainder of his life" and the statutorily authorized sentence of "imprisonment for life" is one of semantics, not substance. Petitioner has failed "to make a 'substantial showing of the denial of [a] federal right.'" Barefoot v. Estelle, 463 U.S. 880, 893 (1983) (quoting Stewart v. Beto, 454 F.2d 268, 270, n.2 (5th Cir. 1971), cert. denied, 406 U.S. 925 (1972)). We therefore affirm the district court's denial of a certificate of probable cause.

AFFIRMED.

Entered for the Court

Bobby R. Baldock
Circuit Judge