

**UNITED STATES COURT OF APPEALS  
TENTH CIRCUIT  
Byron White United States Courthouse  
1823 Stout Street  
Denver, Colorado 80257  
(303) 844-3157**

**Patrick J. Fisher, Jr.**  
Clerk

January 31, 2001

**TO:** ALL RECIPIENTS OF THE ORDER AND JUDGMENT

**RE:** 00-5155, *Shaffer v. Boone*  
Filed on January 10, 2001

On page three, last paragraph on the page, the decision states that a copy of the district court's June 21, 2000 order would be attached. The order was omitted in error when the decision was filed. The order and judgment is corrected to include the June 21, 2000 order as an attachment.

A copy of the corrected order and judgment is attached.

Sincerely,

Patrick Fisher, Clerk of Court

By: Keith Nelson  
Deputy Clerk

encl.

UNITED STATES COURT OF APPEALS

JAN 10 2001

TENTH CIRCUIT

**PATRICK FISHER**  
Clerk

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DOUGLAS C. SHAFFER,

Petitioner-Appellant,

v.

BOBBY BOONE, Warden,

Respondent-Appellee.

No. 00-5155

N.D. Okla.

(D.C. No. 96-CV-1141-K)

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**ORDER AND JUDGMENT** \*

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Before **BALDOCK**, **HENRY**, and **LUCERO**, Circuit Judges. \*\*

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Douglas Shaffer, a state prisoner proceeding pro se, seeks a certificate of appealability (“COA”) after the district court dismissed his 28 U.S.C. § 2254 habeas petition. See 28 U.S.C. § 2253(c)(1)(A) (providing that a COA is a necessary predicate to any appeal from a final order in a § 2254 proceeding).

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\* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 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)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

Because Mr. Shaffer has not “made a substantial showing of the denial of a constitutional right,” *id.* § 2253(c)(2), this court denies his request for a COA and dismisses this appeal.

Mr. Shaffer was convicted of second-degree felony murder after prior conviction of two or more felonies. He was sentenced to sixty years’ imprisonment. In his habeas petition, together with his amended petitions, Mr. Shaffer raised eleven grounds of error: (1) ineffective assistance of trial counsel; (2) violation of the Sixth Amendment’s confrontation clause through the admission of a nontestifying codefendant’s confession; (3) reversible error resulting from the prosecutor’s comments regarding Mr. Shaffer’s Fifth Amendment right to remain silent; (4) denial of due process through the prosecutor’s improper closing argument; (5) ineffective assistance of appellate counsel; (6) violation of the Fifth Amendment through the trial court’s instructions; (7) failure of the information to state all the essential elements of the underlying crime; (8) erroneous sentence enhancement; (9) the state court’s lack of subject matter jurisdiction; (10) actual innocence of past convictions considered at sentencing; and (11) violation of due process through extension of leniency to Mr. Shaffer’s codefendant in exchange for her testimony against him. The district court denied the first four claims on the merits; dismissed claims five, six, eight, ten, and eleven as procedurally barred absent prejudice or fundamental

miscarriage of justice; and denied claims seven and nine as not cognizable in federal habeas. This appeal followed.

We construe Mr. Shaffer's allegations liberally, pursuant to Haines v. Kerner, 404 U.S. 519, 520-21 (1972). After a careful review of the record and the applicable case law, we conclude that Mr. Shaffer fails to make a substantial showing of the denial of a constitutional right as required under 28 U.S.C. § 2253(c)(2) for a COA. Specifically, Mr. Shaffer fails to demonstrate "reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." Slack v. McDaniel, 120 S. Ct. 1595, 1604 (2000). Because we agree with the district court's well-reasoned assessment of the issues presented on appeal, we decline to duplicate the same analysis here.

Accordingly, for substantially the same reasons set forth in the district court's June 21, 2000, Order, a copy of which is attached, we DENY Mr. Shaffer's motion for a COA and DISMISS his appeal.

Entered for the Court,

Robert H. Henry  
Circuit Judge

Attachment not available electronically.