

**UNITED STATES COURT OF APPEALS**  
**TENTH CIRCUIT**

**March 6, 2007**

**Elisabeth A. Shumaker**  
**Clerk of Court**

---

GENTRY BOLTON,

Plaintiff-Appellant,

v.

RAY ROBERTS, Warden, El Dorado  
Correctional Facility, and PHILL  
KLINE, Attorney General of Kansas,

Defendants-Appellees.

No. 06-3391  
(D.C. No. 05-CV-03417-MLB)  
(District of Kansas)

---

**ORDER DENYING CERTIFICATE OF APPEALABILITY\***

---

Before **LUCERO, HARTZ, and GORSUCH**, Circuit Judges.

---

On December 10, 1998, a Kansas jury found Gentry Bolton guilty of first-degree murder and aggravated robbery for shooting and killing Shane Bree, a convenience store clerk, in the course of an armed robbery in Kansas City on December 28, 1997. Mr. Bolton collaterally challenged his state court conviction in federal district court, under 28 U.S.C. § 2254, on several grounds. The district court issued a detailed, 24 page opinion denying relief. Mr. Bolton now seeks to appeal the district court's ruling.

---

\* This order is not binding precedent except under the doctrines of law of the case, res judicata and collateral estoppel.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.

Congress has instructed, however, that we may review a district court’s denial of a Section 2254 petition only if a judge first issues a certificate of appealability (“COA”); in turn, such a certificate may be properly issued only if the petitioner has “made a substantial showing of the denial of a constitutional right.” *See* 28 U.S.C. §§ 2253(c)(2). Under our rules, a habeas petitioner must present the COA issue, in the first instance, to the district court; in this case, the district court declined to grant Mr. Bolton’s COA which was deemed a denial because 30 days had passed from the filing of the notice of appeal. *See* 10th Cir. R. 22.1(c). Based on our own independent review of the record in this case, including Mr. Bolton’s petition and appeal, we agree that he has not met the threshold set by Congress for the issuance of a COA and do so for substantially the same reasons outlined in the District Court’s opinion on Mr. Bolton’s Section 2254 petition.

ENTERED FOR THE COURT

Neil M. Gorsuch  
Circuit Judge