

**NOV 24 1997**

**PATRICK FISHER**  
Clerk

UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

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TIMOTHY LEE GRAVES,  
Petitioner-Appellant,

v.

MICHAEL CARR,  
Respondent-Appellee.

No. 96-5126  
(D.C. No. 95-CV-284)  
(N.D. Okla.)

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ORDER AND JUDGMENT\*

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Before PORFILIO and LUCERO, Circuit Judges, and MARTEN,\*\* District Judge.

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After examining appellant's brief and the 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.

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\* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

\*\* The Honorable J. Thomas Marten, District Judge, United States District Court for the District of Kansas, sitting by designation.

Petitioner Timothy Lee Graves appeals the district court's denial of his petition for writ of habeas corpus brought pursuant to 28 U.S.C. § 2254.

For substantially the reasons stated by the district court, we affirm.<sup>1</sup>

Petitioner was convicted by a jury of first degree murder. His conviction was upheld on direct appeal, and two subsequent state postconviction proceedings failed to provide relief for petitioner. Petitioner now applies for federal habeas relief arguing that (1) his confession was procured in violation of his right to counsel; (2) his trial and appellate counsel were ineffective, particularly because of trial counsel's failure to inform him of a proffered plea bargain; (3) the jury instruction on first degree murder was improper; and (4) the jury improperly considered the possibility of parole for petitioner while deliberating his guilt or innocence.

In conducting our de novo review of the district court's denial of petitioner's application for habeas relief, we have reviewed the record, petitioner's brief, and the analysis of the district court. The district court

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<sup>1</sup> Petitioner has moved this court for issuance of a certificate of appealability to prosecute his appeal. Because he filed his habeas corpus petition on March 28, 1995, prior to the April 24, 1996 effective date of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), he does not need a certificate of appealability to proceed. See United States v. Kunzman, 125 F.3d 1363, 1364 n.2 (10th Cir. 1997). Therefore, pursuant to the requirements of 28 U.S.C. § 2253 in effect at the time petitioner filed in the district court, we deny a certificate of probable cause.

correctly concluded that any error from the admission of petitioner's confession was harmless and that he was not denied effective assistance of counsel.

Petitioner has procedurally defaulted his remaining claims, thus precluding federal habeas review.

The judgment of the United States District Court for the Northern District of Oklahoma is AFFIRMED. The mandate shall issue forthwith.

Entered for the Court

John C. Porfilio  
Circuit Judge