

OCT 10 1997

PATRICK FISHER
Clerk

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

STEVE ALLEN WELDON,

Petitioner-Appellant,

v.

WYOMING DEPARTMENT OF
CORRECTIONS STATE
PENITENTIARY WARDEN, in his
official capacity, also known as James
Ferguson; WYOMING ATTORNEY
GENERAL,

Respondents-Appellees.

No. 97-8041
(D.C. No. 96-CV-176)
(District of Wyoming)

ORDER AND JUDGMENT*

Before **SEYMOUR**, Chief Judge, **PORFILIO** and **MURPHY**, Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of the appeal. *See* Fed. R. App. P. 34(a) and 10th Cir. R. 34.1.9. The case is therefore ordered submitted without oral argument.

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. This 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 matter is before us upon appellant's petition for issuance of a certificate of appealability. Because his petition was filed before April 24, 1996, the provisions of 28 U.S.C. § 2253(c)(1996) are not applicable, and a certificate of appealability is not required to establish jurisdiction in this court. *Lindh v. Murphy*, ___ U.S. ___, 117 S. Ct. 2059 (1997). A certificate of probable cause is **GRANTED**, and we proceed to the merits of this case.

After examination of Mr. Weldon's brief and the record, we conclude the district court did not err in the dismissal of the petition. We affirm essentially for the reasons stated in the district court's order of dismissal.

ENTERED FOR THE COURT

John C. Porfilio
Circuit Judge