

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-60081
Summary Calendar

MICHAEL D. GRAHAM,

Petitioner-Appellant,

versus

RAYMOND ROBERTS, SUPERINTENDENT,
MISSISSIPPI STATE PENITENTIARY,

Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 1:94-CV-347-GR

August 28, 1996

Before HIGGINBOTHAM, WIENER, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Michael Graham, a Mississippi prisoner, #73380, appeals the district court's denial of his 28 U.S.C. § 2254 petition for a writ of habeas corpus, arguing that his trial attorney was ineffective for preventing him from testifying in his own behalf and that he was deprived of his constitutional right to testify. Graham's claims are meritless because his proposed testimony

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

would not have supported a "heat of passion" defense under Mississippi law; he has not shown prejudice as to his ineffective-assistance claim; he has not shown he was denied the right to testify and, even assuming that such a denial occurred, it was "harmless error." See Strickland v. Washington, 466 U.S. 668, 687 (1984); Rock v. Arkansas, 483 U.S. 44, 49-52 (1987); Brecht v. Abrahamson, 507 U.S. 619, 637-38 (1993); Graham v. State, 582 So. 2d 1014, 1015-17 (Miss. 1991). Because the district court was not required to resolve any disputed facts, no evidentiary hearing was required. See Lavernia v. Lynaugh, 845 F.2d 493, 501 (5th Cir. 1988).

AFFIRMED.