

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

DEC 09 2008

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

RAYMOND DON WAI MUI,

Petitioner - Appellant,

v.

JOE MCGRATH,

Respondent - Appellee.

No. 05-56819

D.C. No. CV-03-02707-R

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
Manuel L. Real, District Judge, Presiding

Submitted November 24, 2008\*\*

Before: ALARCÓN, LEAVY, and TALLMAN, Circuit Judges.

California state prisoner Raymond Don Wai Mui appeals from the district court's judgment dismissing his 28 U.S.C. § 2254 petition. We have jurisdiction pursuant to 28 U.S.C. § 2253, and we affirm.

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Mui contends that the admission of evidence concerning his tattoo and the meaning thereof was irrelevant and prejudicial, thereby depriving him of a fair trial. Both parties agree that Mui failed to exhaust the remedies available in state court. Nevertheless, the district court exercised its discretion to dismiss on the merits pursuant to 28 U.S.C. § 2254(b)(2). Mui's contention that he is entitled to federal habeas corpus relief fails because it is perfectly clear that he does not raise even a colorable federal claim. *See Cassett v. Stewart*, 406 F.3d 614, 623-24 (9th Cir. 2005). Therefore, the district court properly found that the state trial court's error did not have a substantial and injurious effect or influence in determining the jury's verdict. *See Brecht v. Abrahamson*, 507 U.S. 619, 638 (1993); *see also Fry v. Pliler*, 127 S. Ct. 2321, 2327 (2007).

**AFFIRMED.**