

DEC 30 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GARY BROWNLEE,

Petitioner - Appellant,

v.

JIM HILL, Warden,

Respondent - Appellee.

No. 06-56222

D.C. No. CV-05-01608-FMC

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
Florence-Marie Cooper, District Judge, Presiding

Submitted December 17, 2008\*\*

Before: GOODWIN, WALLACE and RYMER, Circuit Judges.

California state prisoner Gary Brownlee appeals from the district court's judgment denying his 28 U.S.C. § 2254 petition. We have jurisdiction pursuant to

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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).

28 U.S.C. § 2253, and we affirm.

Brownlee contends that the district court erred by denying a stay and abeyance of his mixed petition. We conclude that the district court did not abuse its discretion in finding that Brownlee failed to demonstrate good cause for his failure to exhaust his claims in state court and denying a stay and abeyance for that reason. *See Wooten v. Kirkland*, 540 F.3d 1019, 1023–24 (9th Cir. 2008).

To the extent that Brownlee raises issues not included in the certificate of appealability, we construe such contentions as a motion to broaden the certificate of appealability, and we deny the motion. *See* 9th Cir. R. 22-1(e); *See also Hiivala v. Wood*, 195 F.3d 1098, 1104 (9th Cir. 1999) (per curiam).

**AFFIRMED.**