

JAN 28 2009

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

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ADRIAN CIDA,

Petitioner - Appellant,

v.

JOE MCGRATH,

Respondent - Appellee.

No. 06-55904

D.C. No. CV-03-00068-DSF

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Dale S. Fischer, District Judge, Presiding

Argued and Submitted January 12, 2009
Pasadena, California

Before: TROTT, KLEINFELD and IKUTA, Circuit Judges.

We affirm the district court's denial of Adrian Cida's habeas petition and dismissal with prejudice. Cida filed his petition after April 16, 1996, so our review is limited by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). Stevenson v. Lewis, 384 F.3d 1069, 1071 (9th Cir. 2004).

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

Cida is not entitled to relief on the certified issue.¹ The California court of appeal's conclusion that there was no violation of Cida's due process rights under Brady v. Maryland, 373 U.S. 83 (1963), is not contrary to, or an unreasonable application of, clearly established federal law. Evidence of the misconduct allegations and investigation of Officer Montoya could reasonably be determined to be not material under Brady. See Strickler v. Greene, 527 U.S. 263, 291-94 (1999); see also Wood v. Bartholomew, 516 U.S. 1, 6-7 (1995) (per curiam).

AFFIRMED.

¹ Cida also argues that the California court of appeal erred by holding that his attorney did not render ineffective assistance of counsel by seeking to introduce evidence that Cida offered to take a polygraph test, and by entering into a stipulation about polygraph evidence. We decline to expand the Certificate of Appealability to include these issues. 28 U.S.C. § 2253(c)(2); Doe v. Woodford, 508 F.3d 563, 567 (9th Cir. 2007).