

JAN 28 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LEO SWEENEY,

Petitioner - Appellant,

v.

JAMES A. YATES,

Respondent - Appellee.

No. 07-56298

D.C. No. CV-05-01138-JSL(PLA)

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
J. Spencer Letts, District Judge, Presiding

Argued and Submitted January 14, 2009
Pasadena, California

Before: KOZINSKI, Chief Judge, TROTT and KLEINFELD, Circuit Judges.

We affirm the district court's denial of Leo Sweeney's habeas petition and dismissal with prejudice. Sweeney 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.

The California Court of Appeal's conclusion that there was no violation of Sweeney's Sixth Amendment rights is not contrary to, or an unreasonable application of, clearly established federal law. It was not objectively unreasonable to conclude that the jury followed the limiting instructions when the redaction used the suggested language in Gray v. Maryland, 523 U.S. 185, 196-97 (1998) and was incriminating only when linked with other evidence introduced at trial. Id.

The California Court of Appeal's determination that denial of the motion to sever did not violate Sweeney's right to a fair trial is not contrary to, or an unreasonable application of, clearly established federal law. Evidence of the July 1997 attempted robbery did not have a "substantial and injurious" effect on the trial or verdict. Brecht v. Abrahamson, 507 U.S. 619, 637 (1993).

AFFIRMED.