

FEB 19 2009

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

NOT FOR PUBLICATION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

MICHAEL RAY REKOW,

Petitioner - Appellant,

v.

GUY HALL,

Respondent - Appellee.

No. 07-35689

D.C. No. CV-06-00082-
MRH/TMC

MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Michael R. Hogan, District Judge, Presiding

Submitted January 8, 2009**
San Francisco, California

Before: HUG, FARRIS and T.G. NELSON, Circuit Judges.

Petitioner Michael Ray Rekow appeals from the order of the district court denying his habeas petition. We have jurisdiction pursuant to 28 U.S.C. § 2254, and we affirm.

* 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).

Rekow conceded procedural default in the district court and on appeal, yet failed to argue in favor of an exception to the procedural default doctrine, e.g., cause and prejudice, in the district court. *See Coleman v. Thompson*, 501 U.S. 722, 750 (1991). We decline to consider Rekow's cause and prejudice arguments raised for the first time on appeal. *See Jiminez v. Rice*, 276 F.3d 478, 481 (9th Cir. 2001). Even assuming we were to find that Rekow generally raised cause and prejudice in the district court, the record illustrates that he never addressed the sole argument he raises on appeal—that the State of Oregon erected barriers that impeded his counsel's efforts to comply with state procedural rules.

The district court did not err in declining to hold an evidentiary hearing on Rekow's underlying habeas claims.

AFFIRMED.