

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAR 10 2009

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

CLINTON DOUGLAS KING,

Petitioner - Appellant,

v.

STUART J. RYAN,

Respondent - Appellee.

No. 07-55150

D.C. No. CV-04-03903-
RSWL(SS)

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Ronald S.W. Lew, District Judge, Presiding

Submitted March 6, 2009**
Pasadena, California

Before: O'SCANNLAIN, RYMER, and WARDLAW, Circuit Judges.

Clinton Douglas King (King) appeals from the district court's denial of his petition for habeas corpus under 28 U.S.C. § 2254. 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).

King presents no evidence of juror misconduct that supports finding a violation of clearly established federal law in denying him access to the jurors' personal information. *See* 28 U.S.C. § 2254(d)(1); *Grotemeyer v. Hickman*, 393 F.3d 871 (9th Cir. 2004). That a juror brought his "outside experience to bear on the case is not sufficient to make [his] alleged statements violate" King's right of confrontation or right to an impartial jury. *Grotemeyer*, 393 F.3d at 878-79.

Moreover, King does not present colorable evidence of extrinsic influence so that an evidentiary hearing or other action, such as disclosure of jurors' personal information, was required under *Remmer v. United States*, 347 U.S. 227 (1954). *Grotemeyer*, 393 F.3d at 880-81. King attempts to distinguish *Grotemeyer*, but that case involved the denial of an evidentiary hearing under similar circumstances. *See Grotemeyer* at 875-76; 880-81. A juror's provision of a scientific explanation for his statements during deliberations is not colorable evidence of misconduct and does not create a right to a hearing or other action under *Remmer*. *See id.* at 880-81. Thus, this case is unlike those King relies on, where allegations of juror misconduct necessitated a hearing. *See Remmer*, 347 U.S. at 228-30; *Smith v. Phillips*, 455 U.S. 209, 212-214 (1982); *Dyer v. Calderon*, 151 F.3d 970, 972-73 (9th Cir. 1998) (en banc).

We do not address King's contention that the state court made unreasonable determinations of fact under 28 U.S.C. § 2254(d)(2) in finding that an evidentiary issue was not material at trial and was a matter of common knowledge. Even if King were to prevail on these issues, the juror conduct at issue would not be misconduct.

AFFIRMED.