

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAR 17 2009

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

ANTHONY GRAHAM TROTTER,)	No. 07-55451
)	
Petitioner – Appellant,)	D.C. No. CV-05-08449-RSWL
)	
v.)	MEMORANDUM*
)	
CHARLES HARRISON,)	
)	
Respondent – Appellee.)	
)	
_____)	

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

Argued and Submitted March 4, 2009
Pasadena, California

Before: BEEZER, FERNANDEZ, and PAEZ, Circuit Judges.

Anthony Graham Trotter appeals the district court’s denial of his petition for habeas corpus relief. See 28 U.S.C. § 2254. We affirm.

Neither the California courts nor the district court erred in determining that Trotter’s counsel was not constitutionally ineffective when he neither objected to

*This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

the California trial court's answering of a jury question by refusing to further instruct on the meaning of "intent to kill," nor asked for a reread of an intoxication instruction. See Wiggins v. Smith, 539 U.S. 510, 520, 123 S. Ct. 2527, 2534–35, 156 L. Ed. 2d 471 (2003) (standard for grant of habeas corpus relief); Woodford v. Visciotti, 537 U.S. 19, 25, 123 S. Ct. 357, 360, 154 L. Ed. 2d 279 (2002) (per curiam) (proper use of ineffective assistance of counsel standard in habeas corpus case); Strickland v. Washington, 466 U.S. 668, 687–88, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674 (1984) (ineffective assistance of counsel standard); Duncan v. Ornoski, 528 F.3d 1222, 1233–34 (9th Cir. 2008) (ineffective assistance of counsel standard); Edwards v. Lamarque, 475 F.3d 1121, 1125 (9th Cir. 2007) (en banc) (standard for the grant of habeas corpus relief); see also People v. Cain, 10 Cal. 4th 1, 37 n.13, 892 P.2d 1224, 1246 n.13, 40 Cal. Rptr. 481, 502 n.13 (1995) (stating that "intent to kill" and "specific intent to kill" are "readily understandable"); People v. Ramsey, 79 Cal. App. 4th 621, 630, 94 Cal. Rptr. 2d 301, 307 (Ct. App. 2000) (holding there is no need to define words in common usage).

We decline to consider Trotter's newly minted claim that counsel was not present when the jury question was answered. See Taniguchi v. Schultz, 303 F.3d 950, 958–59 (9th Cir. 2002).

Moreover, any claim by Trotter that the instructions themselves were

constitutionally defective was procedurally defaulted,¹ and he has not shown cause, prejudice or factual innocence.²

AFFIRMED.

¹See Paulino v. Castro, 371 F.3d 1083, 1092–93 (9th Cir. 2004); Melendez v. Pliler, 288 F.3d 1120, 1125 (9th Cir. 2002); People v. Alfaro, 41 Cal. 4th 1277, 1303, 163 P.3d 118, 138, 63 Cal. Rptr. 3d 433, 457 (2007).

²See Cockett v. Ray, 333 F.3d 938, 943–44 (9th Cir. 2003).