

APR 22 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>DARRYL LEE PALMER,</p> <p>Petitioner - Appellant,</p> <p>v.</p> <p>BENEDICT MARTINEZ,</p> <p>Respondent - Appellee.</p>
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No. 07-36028

D.C. No. CV-06-01075-JCC

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
John C. Coughenour, District Judge, Presiding

Submitted April 13, 2009**

Before: GRABER, GOULD, and BEA, Circuit Judges.

Washington state prisoner Darryl Lee Palmer appeals pro se from the district court's judgment dismissing his 28 U.S.C. § 2254 petition. We have jurisdiction pursuant to 28 U.S.C. §§ 1291 and 2253, 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).

Palmer contends that the district court erred when it determined that he procedurally defaulted his claim that the State of Washington breached his plea agreement in violation of his right to due process under the Fifth and Fourteenth Amendments to the United States Constitution. We conclude that Palmer did not fairly present this claim in state court and procedurally defaulted the claim. *See Gray v. Netherland*, 518 U.S. 152, 162-63 (1996); *Coleman v. Thompson*, 501 U.S. 722, 750 (1991); *Noltie v. Peterson*, 9 F.3d 802, 804-05 (9th Cir 1993).

AFFIRMED.