

MAY 21 2009

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DONALD GENE PHILLIPS,

Petitioner - Appellant,

v.

JOHN MARSHALL, Warden,

Respondent - Appellee.

No. 07-55167

D.C. No. CV-06-02325-VAP

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Virginia A. Phillips, District Judge, Presiding

Submitted May 12, 2009**

Before: PREGERSON, CANBY, and BERZON, Circuit Judges.

California state prisoner Donald Gene Phillips appeals pro se from the district court's judgment denying his 28 U.S.C. § 2254 habeas petition. We have jurisdiction pursuant to 28 U.S.C. § 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).

As the state concedes, its contention that a Certificate of Appealability is required for this appeal is foreclosed. *See Rosas v. Nielsen*, 428 F.3d 1229, 1231-32 (9th Cir. 2005).

Phillips contends that the imposition of a parole term by the California Department of Corrections exceeded the terms of his plea agreement, in violation of his due process rights. We conclude that the state court's decision rejecting this contention was neither contrary to, nor an unreasonable application of, clearly established federal law, nor was it based on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding. *See* 28 U.S.C. § 2254(d)(1), (d)(2); *see also Santobello v. New York*, 404 U.S. 257, 261-62 (1971); *Buckley v. Terhune*, 441 F.3d 688, 694 (9th Cir. 2006) (en banc).

AFFIRMED.