

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAY 26 2009

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

ROBERT SANFORD DIETRICH,

Petitioner - Appellant,

v.

STAN CZERNIAK, Superintendent,

Respondent - Appellee.

No. 07-35948

D.C. No. CV-01-00498-MRH

MEMORANDUM*

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

Submitted May 12, 2009**

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

Oregon state prisoner Robert Sanford Dietrich appeals from the district court's judgment denying his 28 U.S.C. § 2254 habeas 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).

Dietrich contends that he received ineffective assistance of counsel due to his attorney's incorrect advice regarding his potential sentencing exposure. We conclude that the state court reasonably concluded that the record demonstrates that Dietrich's attorney did adequately inform him before sentencing of his sentencing exposure and advise him that he could withdraw his plea. Therefore, Dietrich has not demonstrated prejudice because he has not shown that there is a reasonable probability that, but for counsel's errors, he would not have pled guilty and would have insisted on going to trial. *See Hill v. Lockhart*, 474 U.S. 52, 60 (1985). We therefore conclude that the state court's rejection of Dietrich's ineffective assistance of counsel claim was not contrary to, nor an unreasonable application of, clearly established federal law. *See* 28 U.S.C. § 2254(d)(1); *see also Strickland v. Washington*, 466 U.S. 668, 694 (1984).

Dietrich also contends that his attorney should have done more to combat pressure placed on him to plead guilty by his fellow church members. We decline to address this contention because he raises it for the first time in his opening brief. *See Allen v. Ornoski*, 435 F.3d 946, 960 (9th Cir. 2006).

AFFIRMED.