

JUN 18 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>THOMAS D'ANGELO,</p> <p>Petitioner - Appellant,</p> <p>v.</p> <p>DORA B. SCHRIRO; ATTORNEY GENERAL FOR THE STATE OF ARIZONA,</p> <p>Respondents - Appellees.</p>

No. 07-17197

D.C. No. CV-04-01006-MHM

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Mary H. Murguia, District Judge, Presiding

Argued and Submitted June 9, 2009
San Francisco, California

Before: SCHROEDER, TASHIMA and BEA, Circuit Judges.

Thomas D'Angelo appeals from the denial of his 28 U.S.C. § 2254 petition
for a writ of habeas corpus challenging his state court conviction for attempted first

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

degree murder. The only question before us is whether the Arizona Court of Appeals' decision affirming D'Angelo's conviction violated the standards set forth in the Antiterrorism and Effective Death Penalty Act, 28 U.S.C. § 2254(d).

D'Angelo's sole contention is that the Court of Appeals should have reversed his conviction on the basis of a defective premeditation instruction. The Court of Appeals held that any defect in the instruction was not fundamental error, given the fact that D'Angelo's sole defense was self-defense, and that, therefore, he did not ask the jury to conclude he was guilty of a lesser degree of murder. In fact, D'Angelo successfully objected to the state's proffer of a lesser-included offense instruction. The Court of Appeals' holding was not unreasonable or contrary to clearly established federal law. See 28 U.S.C. § 2254(d)(1).

The district court's denial of habeas corpus relief is AFFIRMED.