

JUN 30 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

WELLS WALTER MOORE, Jr.,

Petitioner - Appellant,

v.

ROBERT LAMPERT, Supt. SRCI,

Respondent - Appellee.

No. 08-35109

D.C. No. CV-04-01885-ALA

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Oregon  
Ann L. Aiken, District Judge, Presiding

Submitted June 16, 2009\*\*

Before: PAEZ, TALLMAN, and N.R. SMITH, Circuit Judges.

Oregon state prisoner Wells Walter Moore, Jr., appeals from the district court's judgment dismissing his 28 U.S.C. § 2254 petition. We have jurisdiction

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\* 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).

pursuant to 28 U.S.C. § 2253, and we affirm.

Moore contends that his trial counsel was ineffective because she failed to advise him that the U.S. Supreme Court's then-recent decision in *Apprendi v. New Jersey*, 530 U.S. 466 (2000), prevented him from being sentenced as a dangerous offender, pursuant to former Oregon Revised Statutes §§ 161.725 and 161.737.

We conclude that the state court's rejection of this claim was not contrary to, or an unreasonable application of, clearly established Supreme Court law. *See* 28 U.S.C. § 2254(d); *see also Hill v. Lockhart*, 474 U.S. 52, 58-60 (1985); *Strickland v. Washington*, 466 U.S. 668, 692-96 (1984).

**AFFIRMED.**