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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RICHARD D. BAMRICK,

Petitioner - Appellant,

v.

SILVA GARCIA,

Respondent - Appellee.

No. 06-55080

D.C. No. CV-03-02032-CAS

MEMORANDUM*

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

Submitted December 15, 2009**

Before: GOODWIN, WALLACE, and FISHER, Circuit Judges.

California state prisoner Richard D. Bamrick 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. § 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 concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Bamrick contends that similar to *Gibson v. Ortiz*, 387 F.3d 812, 822 (9th Cir. 2004), the interplay of CALJIC Nos. 2.50 and 2.50.1 lowered the prosecution's burden of proof at trial, resulting in a structural error requiring automatic reversal. Because the error is not structural, we review for harmlessness. *See Byrd v. Lewis*, 566 F.3d 855, 867 (9th Cir. 2009). We conclude that Bamrick has failed to show that the error had a substantial and injurious effect on the verdict because the jury made special factual findings beyond a reasonable doubt regarding the underlying facts of the case. *See Brecht v. Abrahamson*, 507 U.S. 619, 637-38 (1993).

Panel does not grant en banc review.

AFFIRMED.