

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JAN 07 2010

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

GREGORY LYNN COLBERT,

Petitioner - Appellant,

v.

MIKE KNOWLES,

Respondent - Appellee.

No. 07-16839

D.C. No. CV-02-05894-RMW

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Ronald M. Whyte, District Judge, Presiding

Submitted December 15, 2009**

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

California state prisoner Gregory Lynn Colbert 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).

Colbert contends that the jury instructions given by the court, CALJIC 2.50 and CALJIC 2.50.1, impermissibly lowered the prosecution's burden of proof and violated his rights to due process and a fair trial. Because there is no reasonable likelihood that the jury applied the wrong burden of proof, Colbert is not entitled to habeas relief. *See Mendez v. Knowles*, 556 F.3d 757, 767-70 (9th Cir. 2009).

Colbert's motion to expand the certificate of appealability is denied. *See* 9th Cir. R. 22-1(e); *see also Hiivala v. Wood*, 195 F.3d 1098, 1104-05 (9th Cir. 1999) (per curiam).

AFFIRMED.