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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>TONY JOSE CARAPIA,</p> <p>Petitioner - Appellant,</p> <p>v.</p> <p>JOHN MARSHALL, Warden,</p> <p>Respondent - Appellee.</p>
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No. 07-56799

D.C. No. CV-06-00629-NAJ

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Napoleon A. Jones, District Judge, Presiding

Submitted December 15, 2009**

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

California state prisoner Tony Jose Carapia appeals from the district court's order 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).

Carapia contends there was insufficient evidence to support the jury's finding he committed the offense "for the benefit of, at the direction of, or in association with" a criminal street gang and "with the specific intent to promote, further, or assist in any criminal conduct by gang members" under California Penal Code section 186.22(b)(1). The record reflects that the state court's rejection of this claim was neither contrary to, nor involved an unreasonable application of, clearly established federal law. *See* 28 U.S.C. § 2254(d)(1); *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979). The record further demonstrates that the state court's decision was not based on an unreasonable determination of the facts in light of the evidence presented in the state court proceedings. *See* 28 U.S.C. §2254(d)(2).

AFFIRMED.