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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BRUCE ERIC SMITH,

Petitioner - Appellant,

v.

JEFFERY UTTECHT,

Respondent - Appellee.

No. 07-36047

D.C. No. CV-06-05678-RJB

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Robert J. Bryan, District Judge, Presiding

Submitted February 16, 2010**

Before: FERNANDEZ, GOULD, and M. SMITH, Circuit Judges.

Washington state prisoner Bruce Eric Smith appeals from the district court's dismissal of his 28 U.S.C. § 2254 habeas petition challenging his jury conviction

* 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).

for first degree rape, first degree murder, and first degree burglary. We have jurisdiction pursuant to 28 U.S.C. § 2253, and we affirm.

Smith contends that his due process rights were violated when the trial court permitted the arresting officers to testify about their observations regarding Smith's post-arrest physical condition. Specifically, Smith contends that the officers impermissibly testified about his unresponsiveness, in violation of *Wainwright v. Greenfield*, 474 U.S. 384 (1986). The record reflects that any alleged error is harmless because it did not have a "substantial and injurious effect or influence in determining the jury's verdict." *Brecht v. Abrahamson*, 507 U.S. 619, 623 (1993) (internal quotations omitted).

AFFIRMED.