

MAR 05 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOSE ANTONIO BARRIOS,  
  
Petitioner - Appellant,  
  
v.  
  
G.J. GIURBINO,  
  
Respondent - Appellee.

No. 07-56256

D.C. No. CV-05-03642-JFW

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
John F. Walter, District Judge, Presiding

Submitted February 16, 2010\*\*

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

California state prisoner Jose Antonio Barrios appeals from the district court's judgment dismissing his 28 U.S.C. § 2254 habeas petition. We have jurisdiction pursuant to 28 U.S.C. § 2253, and we affirm.

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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 concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Barrios contends that he received ineffective assistance of counsel when his attorney failed to communicate a plea offer to him which would have avoided a 25-years-to-life sentence pursuant to California's "Three Strikes" law. Because the record demonstrates that the prosecution never offered Barrios a plea offer, the California Supreme Court's rejection of this claim was neither contrary to, nor an unreasonable application of, clearly established federal law. *See* 28 U.S.C. § 2254(d)(1); *see also Strickland v. Washington*, 466 U.S. 668, 687 (1984).

**AFFIRMED.**