

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAR 10 2010

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

STEVEN LOUIS HIRATA,

Petitioner - Appellant,

v.

GAIL LEWIS,

Respondent - Appellee.

No. 06-55436

D.C. No. CV-03-00504-NM

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Nora M. Manella, District Judge, Presiding

Submitted December 17, 2009**

Before: SKOPIL, LEAVY, and T.G. NELSON, Circuit Judges.

California state prisoner Steven Louis Hirata appeals from the district court's judgment denying his 28 U.S.C. § 2254 petition. We have jurisdiction pursuant to 28 U.S.C. §§ 1291 and 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).

Hirata contends that the trial court violated his Fourteenth Amendment right to due process by admitting into evidence prior uncharged conduct, tending to show propensity to commit the charged offenses. We conclude that the state court's decision rejecting this claim was not contrary to, or an unreasonable application of, clearly established federal law, as determined by the United States Supreme Court. *See* 28 U.S.C. § 2254(d)(1); *Estelle v. McGuire*, 502 U.S. 62, 75 n. 5 (1991); *Alberni v. McDaniel*, 458 F.3d 860, 863-7 (9th Cir. 2006).

Hirata also contends that the prosecutor engaged in misconduct by eliciting profile evidence and improper expert testimony, and that the trial court compounded that misconduct by admitting this evidence in violation of his due process rights. We conclude that the state court's decision rejecting this claim was not contrary to, or an unreasonable application of, clearly established federal law. *See* 28 U.S.C. § 2254(d)(1); *Darden v. Wainwright*, 477 U.S. 168, 181-3 (1986); *Briceno v. Scribner*, 555 F.3d 1069, 1077-8 (9th Cir. 2009); *Drayden v. White*, 232 F.3d 704, 713-4 (9th Cir. 2000).

To the extent Hirata raises uncertified issues in his briefs, we construe those contentions as a motion to expand the certificate of appealability and we deny the motion. *See* 9th Cir. R. 22-1(e); *Hiivala v. Wood*, 195 F.3d 1098, 1104-5 (9th Cir. 1999) (per curiam).

AFFIRMED.