

MAR 26 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>RIKI MUHAMMAD,</p> <p>Petitioner - Appellant,</p> <p>v.</p> <p>WILLIAM WHITE; et al.,</p> <p>Respondents - Appellees.</p>
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No. 07-17201

D.C. No. CV-06-01036-SMM

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Stephen M. McNamee, District Judge, Presiding

Submitted March 16, 2010**

Before: SCHROEDER, PREGERSON, and RAWLINSON, Circuit Judges.

William White is substituted for his predecessor, Dora Schriro, pursuant to
Fed. R. App. P. 43(c)(2).

Arizona state prisoner Riki Muhammad appeals from the district court's

* 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).

judgment denying his 28 U.S.C. § 2254 habeas petition. We have jurisdiction pursuant to 28 U.S.C. § 2253, and we vacate and remand.

Muhammad contends that his trial counsel was ineffective for providing erroneous advice regarding the degree of intent that the state was required to prove at trial. Muhammad states that his reliance on this erroneous advice led him to reject a plea offer and this fact, coupled with the significant sentencing disparity, is sufficient to demonstrate prejudice. Muhammad alleges facts which, if proven, would entitle him to relief and, because he was never given a full and fair hearing in state court, he is entitled to a hearing in district court. We vacate the district court's denial of the habeas petition and remand for an evidentiary hearing to address the merits of Muhammad's ineffective assistance of counsel claim. *See Houston v. Schomig*, 533 F.3d 1076, 1083 (9th Cir. 2008).

VACATED; REMANDED FOR AN EVIDENTIARY HEARING.