

MAR 26 2010

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MICHAEL HOWARD POLAND,

Petitioner - Appellant,

v.

CLARK,

Respondent - Appellee.

No. 07-56702

D.C. No. CV-06-01368-MLH

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Marilyn L. Huff, District Judge, Presiding

Submitted March 16, 2010**

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

California state prisoner Michael Howard Poland appeals pro se from the district court's judgment dismissing his 28 U.S.C. § 2254 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).

Poland contends that the trial court violated his constitutional rights by denying his motion for a mistrial because the jury committed misconduct by considering, during deliberations, a transcript that was not admitted into evidence. The record reflects that the California state court's rejection of this claim did not result in a decision that was "contrary to, or involve[] an unreasonable application of, clearly established Federal law," or "an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." *See* 28 U.S.C. § 2254(d); *see also Mancuso v. Olivarez*, 292 F.3d 939, 949-53 (9th Cir. 2002).

AFFIRMED.