

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAR 26 2010

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

ANTONIO COCA, AKA Anthony
Alvaras,

Petitioner - Appellant,

v.

DWIGHT NEVEN,

Respondent - Appellee.

No. 08-16428

D.C. No. 2:05-CV-00816-JCM

MEMORANDUM *

Appeal from the United States District Court
for the District of Nevada
James C. Mahan, District Judge, Presiding

Submitted March 16, 2010 **

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

Nevada state prisoner Antonio Coca appeals pro se from the district court's judgment dismissing his 28 U.S.C. § 2254 habeas petition. We have jurisdiction

* 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).

pursuant to 28 U.S.C. § 2253, and we affirm.

Coca contends that the state court violated the legal principles articulated in *Apprendi v. New Jersey*, 530 U.S. 466 (2000), because it considered facts other than the fact of his prior convictions when it sentenced him pursuant to Nevada's habitual criminal statute, Nev. Rev. Stat. § 207.010. Coca's arguments are squarely foreclosed by *Tilcock v. Budge*, 538 F.3d 1138, 1143-45 (9th Cir. 2008).

Coca further contends that his trial counsel was ineffective for failing to object to the state court's alleged *Apprendi* error. Because Coca's underlying *Apprendi* argument fails, Coca cannot meet his burden under *Strickland v. Washington*, 466 U.S. 668 (1984).

Coca's letter, received in this court on February 26, 2010, is deemed filed and is denied as moot.

AFFIRMED.