

MAR 31 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DEMETRIOUS LONZELL GREEN,

Petitioner - Appellant,

v.

K. PROSPER, Warden,

Respondent - Appellee.

No. 08-55576

D.C. No. 2:05-cv-08759-JVS

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
James V. Selna, District Judge, Presiding

Submitted March 16, 2010**

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

California state prisoner Demetrious Lonzell Green appeals pro se from the district court's judgment denying his 28 U.S.C. § 2254 habeas 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).

Green contends that the California trial court violated his Sixth Amendment rights pursuant to *Blakely v. Washington*, 542 U.S. 296 (2004), and *Cunningham v. California*, 549 U.S. 270 (2007), by imposing an upper-term sentence based on judicially-determined facts.

Because the trial court relied on at least one permissible factor in enhancing Green's sentence, the California Court of Appeal's decision rejecting this claim was neither contrary to, nor an unreasonable application of, clearly established federal law as determined by the Supreme Court. *See* 28 U.S.C. § 2254(d)(1); *see also Butler v. Curry*, 528 F.3d 624, 643 (9th Cir.), *cert. denied*, 129 S. Ct. 767 (2008).

AFFIRMED.