

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

APR 01 2010

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

JESUS ESPINOZA,

Petitioner - Appellant,

v.

STUART J. RYAN,

Respondent - Appellee.

No. 07-55120

D.C. No. CV-05-02719-GPS

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
George P. Schiavelli, District Judge, Presiding

Submitted March 16, 2010**

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

California state prisoner Jesus Espinoza appeals 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.

Espinoza contends that the trial court violated his due process rights by mis-instructing the jury regarding the elements of voluntary manslaughter. We agree with the district court that the instructional error did not have a “substantial and injurious effect or influence in determining the jury’s verdict.” *See Brecht v. Abrahamson*, 507 U.S. 619, 623 (1993).

AFFIRMED.