

APR 16 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CARNELL U. PRATT,

Petitioner - Appellant,

v.

TERESA A. SCHWARTZ,

Respondent - Appellee.

No. 07-55457

D.C. No. CV-04-04142-DOC

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
David O. Carter, District Judge, Presiding

Submitted April 5, 2010**

Before: RYMER, McKEOWN, and PAEZ, Circuit Judges.

California state prisoner Carnell U. Pratt appeals from the district court's judgment dismissing 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).

Pratt contends that his due process rights were violated when the trial court admitted testimony about Pratt's tattoo without instructing the jury that it could not consider the testimony as propensity evidence. However, the state courts' rejection of this claim was not objectively unreasonable. *See Himes v. Thompson*, 336 F.3d 848, 852-53 (9th Cir. 2003) (describing standard of review); *see also Alberni v. McDaniel*, 458 F.3d 860, 866-67 (9th Cir. 2006) (holding that a due process right against admission of propensity evidence "has not been clearly established by the Supreme Court, as required by AEDPA"). Furthermore, our review of the record indicates that the district court correctly determined that any error in omitting a limiting instruction was harmless under the standard announced in *Brecht v. Abrahamson*, 507 U.S. 619, 623 (1993).

AFFIRMED.