

APR 22 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ROBERT JOHN CRUZ,

Petitioner - Appellant,

v.

ROSANNE CAMPBELL,

Respondent - Appellee.

No. 08-15916

D.C. No. 3:06-CV-06405-MJJ

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Martin J. Jenkins, District Judge, Presiding

Submitted April 5, 2010**

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

California state prisoner Robert John Cruz appeals 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).

Cruz contends that the trial court violated his due process rights by failing to consider his background and character when it denied his motion to dismiss a prior “strike” conviction, pursuant to California Penal Code § 1385. This contention is belied by the record. Thus, the California Court of Appeal’s decision rejecting this claim was not based on an unreasonable determination of the facts in light of the evidence presented. *See* 28 U.S.C. § 2254(d)(2).

Cruz also contends that his sentence of 25 years to life was cruel and unusual punishment in violation of the Eighth Amendment. The California Court of Appeal’s decision rejecting this claim was neither contrary to, nor involved an unreasonable application of, clearly established federal law as determined by the Supreme Court of the United States. *See* 28 U.S.C. § 2254(d)(1); *see also Ewing v. California*, 538 U.S. 11, 29-31 (2003).

AFFIRMED.