

MAY 13 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>GREGORY ANDRE SMITH,</p> <p>Petitioner - Appellant,</p> <p>v.</p> <p>CHARLES HARRISON,</p> <p>Respondent - Appellee.</p>
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No. 08-56925

D.C. No. 2:06-cv-03158-SGL-  
PLA

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
Stephen G. Larson, District Judge, Presiding

Argued and Submitted May 4, 2010  
Pasadena, California

Before: O’SANNLAIN and TALLMAN, Circuit Judges, and LEFKOW,  
District Judge.

Petitioner-Appellant Gregory Andre Smith (“Smith”) appeals a district court order dismissing his petition for a writ of habeas corpus. The parties are familiar with the facts of the case and we do not repeat them here. We have jurisdiction

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The Honorable Joan H. Lefkow, United States District Judge for the Northern District of Illinois, sitting by designation.

pursuant to 28 U.S.C. §§ 1291 and 2253. We affirm the judgment of the district court.

The California Court of Appeal did not unreasonably apply Supreme Court precedent, 28 U.S.C. § 2254(d), because the witness “was unavailable to testify, and the defendant had had a prior opportunity for cross-examination,” *Crawford v. Washington*, 541 U.S. 36, 54 (2004). That Smith’s opportunity for cross-examination came at a preliminary hearing does not change this conclusion. *See California v. Green*, 399 U.S. 149, 165 (1970); *Delgadillo v. Woodford*, 527 F.3d 919, 926 (9th Cir. 2008). Moreover, “the Confrontation Clause guarantees an *opportunity* for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish.” *Delaware v. Van Arsdall*, 475 U.S. 673, 679 (1986) (quoting *Delaware v. Fensterer*, 474 U.S. 15, 20 (1985) (per curiam)).

We decline Smith’s request to expand the certificate of appealability. *See* 28 U.S.C. § 2253(c)(2).

**AFFIRMED.**