

JUN 11 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

VITALY ZAKOUTO,

Petitioner - Appellant,

v.

JAMES BENEDETTI,

Respondent - Appellee.

No. 08-15619

D.C. No. 06-CV-00133-JCM

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
James C. Mahan, District Judge, Presiding

Submitted May 25, 2010**

Before: CANBY, THOMAS, and W. FLETCHER, Circuit Judges.

Nevada state prisoner Vitaly Zakouto appeals from the district court's judgment denying his 28 U.S.C. § 2254 petition. We have jurisdiction under 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).

Zakouto contends that the trial court violated his confrontation rights by admitting into evidence the deceased victim's videotaped testimony from a prior family court proceeding. It is undisputed that the victim was unavailable to testify at trial and that Zakouto had an opportunity to cross-examine her at the earlier proceeding. Therefore, the state court's decision rejecting Zakouto's confrontation clause claim was neither contrary to, nor 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); *see also Crawford v. Washington*, 541 U.S. 36, 59 (2004); *United States v. Owens*, 484 U.S. 554, 559 (1988).

AFFIRMED.