

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUN 15 2010

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

CHRISTOPHER D. ZURCHER,

Petitioner - Appellant,

v.

GUY HALL, Superintendent, Two Rivers
Correctional Institution,

Respondent - Appellee.

No. 08-35881

D.C. No. 3:07-cv-00570-PK

MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Garr M. King, District Judge, Presiding

Submitted May 25, 2010**

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

Oregon state prisoner Christopher D. Zurcher appeals from the district court's judgment denying his 28 U.S.C. § 2254 habeas 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).

Zurcher contends that his counsel rendered ineffective assistance of counsel by failing to object, based on *Apprendi v. New Jersey*, 530 U.S. 466 (2000), to the imposition of an upward departure from the presumptive sentence under the Oregon Sentencing Guidelines based upon judge-found facts. Because Zurcher has failed to demonstrate prejudice from any alleged error, the Oregon court's rejection of this claim was neither contrary to, nor an unreasonable application of, clearly established Supreme Court law. *See* 28 U.S.C. § 2254(d)(1); *see also Strickland v. Washington*, 466 U.S. 668, 694 (1984).

AFFIRMED.