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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FRANCISCO DUENAS-QUINTERO,

Petitioner - Appellant,

v.

SHARON BLACKETTER,

Respondent - Appellee.

No. 08-36004

D.C. No. 6:06-cv-01568-TMC

MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Thomas M. Coffin, Magistrate Judge, Presiding

Submitted May 25, 2010**

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

Oregon state prisoner Francisco Duenas-Quintero 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).

Duenas-Quintero contends his trial and appellate counsel rendered ineffective assistance of counsel by failing to object, at trial or contest on appeal, to judicial fact finding that led to a higher criminal history category and a higher sentence. Because the sentencing judge was permitted under Oregon law to make the findings that Duenas-Quintero complains of, counsel's failure to object did not amount to deficient performance. Therefore, 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, 687-88 (1984).

As Duenas-Quintero acknowledges, his counsel did not render ineffective assistance by failing to object to factual findings used to impose consecutive sentences. *See Oregon v. Ice*, 129 S.Ct. 711, 714-15 (2009).

AFFIRMED.