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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>BOBBY DARRELL COLBERT,</p> <p>Petitioner - Appellant,</p> <p>v.</p> <p>JIM MCDONALD,</p> <p>Defendant - Appellee.</p>
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No. 09-35537

D.C. No. 2:08-cv-00870-RSL

MEMORANDUM\*

Appeal from the United States District Court  
for the Western District of Washington  
Robert S. Lasnik, Chief District Judge, Presiding

Submitted June 29, 2010\*\*

Before: ALARCÓN, LEAVY, and GRABER, Circuit Judges.

Washington state prisoner Bobby Darrell Colbert appeals pro se 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.

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\* 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).

Colbert contends that the trial court's denial of his motion to sever the two unrelated rape charges for trial denied his due process right to a fair trial. We do not reach the merits of this claim, however, because Colbert failed to exhaust it in state court. *See* 28 U.S.C. § 2254(b)(1)(A); *see also* *Hiivala v. Wood*, 195 F.3d 1098, 1106-07 (9th Cir.1999); *Baldwin v. Reese*, 541 U.S. 27, 32 (2004).

**AFFIRMED.**