NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MICHAEL R. KENNEDY, Jr., Petitioner - Appellant, v. JOHN C. MARSHALL, Respondent - Appellee.	No. 07-55053 D.C. No. CV-05-00164-RGK MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
R. Gary Klausner, District Judge, Presiding

Submitted June 29, 2010**

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

California state prisoner Michael R. Kennedy, Jr. 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).

Kennedy contends that the trial court's admission into evidence of the victim's preliminary hearing testimony violated his Sixth Amendment right to confrontation. This contention fails because the record reflects that the prosecution went to considerable lengths to obtain the victim's attendance at trial, and thus satisfied the "good-faith effort" required to demonstrate unavailability. *See Ohio v. Roberts*, 448 U.S. 56, 74-76 (1980); *see also Windham v. Markle*, 163 F.3d 1092, 1102 (1998). Moreover, Kennedy cross-examined the victim at the preliminary hearing. *See Ohio*, 448 U.S. at 71-73. Thus, the state court's decision denying Kennedy's claims was neither contrary to, nor involved an unreasonable application of, clearly established Supreme Court law. *See* 28 U.S.C. § 2254(d)(1).

We do not address the State's exhaustion argument because it is "perfectly clear" that the claim fails on the merits. *See Cassett v. Stewart*, 406 F.3d 614, 624 (9th Cir. 2005).

AFFIRMED.