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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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| <p>ARMIK MARKARIAN,</p> <p>Petitioner - Appellant,</p> <p>v.</p> <p>JAMES YATES; et al.,</p> <p>Respondents - Appellees.</p> |
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No. 07-16290

D.C. No. CV-07-00162-LJO

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of California  
Lawrence J. O’Neill, District Judge, Presiding

Submitted June 29, 2010\*\*

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

California state prisoner Armik Markarian appeals pro se from the district court’s judgment summarily dismissing his 28 U.S.C. § 2254 habeas petition.

Markarian challenges, among other things, the California Board of Parole

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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).

Hearings' 2005 decision to deny him parole. We have jurisdiction under 28 U.S.C. § 2253, and we affirm.

Because Markarian challenges the district court's final order in a habeas proceeding, a certificate of appealability ("COA") is required before an appeal may be taken. *See* 28 U.S.C. § 2253(c); *Hayward v. Marshall*, 603 F.3d 546, 554 (9th Cir. 2010) (en banc).<sup>1</sup> In his briefing on appeal, Markarian raises arguments that were not presented to the district court. We construe this briefing as a motion to issue a COA. So construed, the motion is denied. *See* 9th Cir. R. 22-1; *see also Young v. Runnels*, 435 F.3d 1038, 1044 (9th Cir. 2006) ("Assuming *arguendo* that the Certificate of Appealability encompasses this claim, Young has waived it by failing to raise it before the District Court.").

**AFFIRMED.**

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<sup>1</sup> The district court denied a COA, and we initially denied a COA as unnecessary. A COA is, however, now necessary to pursue this appeal. *See Hayward*, 603 F.3d at 554.