

JUL 06 2010

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>ARMIK MARKARIAN,</p> <p>Petitioner - Appellant,</p> <p>v.</p> <p>JAMES YATES; et al.,</p> <p>Respondents - Appellees.</p>
--

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

* 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).¹ 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.

¹ 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.