

JUL 15 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GREGORY W. O'NEAL,

Petitioner - Appellant,

v.

WARDEN MCDONALD,

Respondent - Appellee.

No. 09-35706

D.C. No. 3:08-cv-05454-FDB

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Franklin D. Burgess, Senior District Judge, Presiding

Argued and Submitted July 12, 2010
Seattle, Washington

Before: RYMER and N.R. SMITH, Circuit Judges, and WALTER, Senior District
Judge.**

Gregory O'Neal appeals the district court's denial of his habeas petition,
arguing that there was insufficient evidence to support the jury's finding that

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

** The Honorable Donald E. Walter, Senior United States District Judge
for the Western District of Louisiana, sitting by designation.

O'Neal was "armed" at the time of several underlying drug manufacturing crimes, for which he was convicted.

As an initial matter, we grant O'Neal's and Appellee's Requests for Judicial Notice.

Without deciding whether O'Neal properly exhausted his federal claim in state court, we deny O'Neal's petition on the merits.

Under Washington law, "[a] defendant is 'armed' when he or she is within proximity of an easily and readily available deadly weapon for offensive or defensive purposes and when a nexus is established between the defendant, the weapon, and the crime." *State v. O'Neal*, 150 P.3d 1121, 1123 (Wash. 2007) (internal quotations and citation omitted). There was sufficient evidence to support a finding that O'Neal was "armed" under Washington law at the time of his underlying offenses. The jury was presented with evidence that loaded firearms were kept in readily accessible spots during the time that O'Neal was engaged in the drug manufacturing operations.

AFFIRMED.