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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>SABABU BADILI ROUNTREE,</p> <p>Petitioner - Appellant,</p> <p>v.</p> <p>JAMES E. TILTON, Acting Secretary of the California Department of Corrections and Rehabilitation; ROBERT A. HOREL, Warden,</p> <p>Respondents - Appellees.</p>

No. 08-55272

D.C. No. CV-06-01204-IEG

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Irma E. Gonzalez, Chief Judge, Presiding

Submitted June 29, 2010**

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

Sababu Badali Rountree appeals from the district court’s judgment denying his 28 U.S.C. § 2254 habeas petition. We have jurisdiction under 28 U.S.C.

* 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).

§ 2253, and we affirm.

Rountree contends that trial counsel was ineffective by: (1) failing to order testing of the victim's clothing for gunshot residue; (2) failing to obtain an expert witness to testify regarding the mental state of the key eyewitness to the shooting; and (3) failing to investigate the possibility of introducing experimental evidence regarding how long the hood of Rountree's car, found near the crime scene, would have stayed warm given weather conditions on the night of the crime. The record indicates that the state court's rejection of these claims was not an unreasonable application of clearly established Supreme Court precedent. *See* 28 U.S.C. § 2254(d); *see also Strickland v. Washington*, 466 U.S. 668, 687 (1984).

Rountree further contends that the trial court violated his due process rights by admitting propensity evidence. As Rountree concedes in his reply brief, this contention is foreclosed by *Alberni v. McDaniel*, 458 F.3d 860, 863-67 (9th Cir. 2006). *See Mejia v. Garcia*, 534 F.3d 1036, 1046 (9th Cir. 2008).

AFFIRMED.