

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

AUG 06 2010

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

PAUL NARVIOS,)	No. 08-16249
)	
Petitioner – Appellant,)	D.C. No. 5:02-CV-05378-RMW
)	
v.)	MEMORANDUM*
)	
A. A. LAMARQUE, Warden,)	
)	
Respondent – Appellee.)	
_____)	

Appeal from the United States District Court
for the Northern District of California
Ronald M. Whyte, Senior District Judge, Presiding

Submitted July 12, 2010**
San Francisco, California

Before: FERNANDEZ, W. FLETCHER, and TALLMAN, Circuit Judges.

Paul Narvios appeals the district court’s denial of his petition for habeas corpus relief. See 28 U.S.C. § 2254. We affirm.

The district court did not err when it determined that Narvios’ right to

*This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

**The panel unanimously finds this case suitable for decision without oral argument. Fed. R. App. P. 34(a)(2).

confront the witness against him¹ was not violated and that Narvios did not meet the requirements for issuance of a writ of habeas corpus.² On the record before them, the state courts could properly determine that his victim's out of court statement was admissible because the statement was reliable and she was not available. See Idaho v. Wright, 497 U.S. 805, 821–22, 110 S. Ct. 3139, 3150, 111 L. Ed. 2d 638 (1990); Ohio v. Roberts, 448 U.S. 56, 66, 100 S. Ct. 2531, 2539, 65 L. Ed. 2d 597 (1980);³ Christian v. Rhode, 41 F.3d 461, 467–68 (9th Cir. 1994); Barker v. Morris, 761 F.2d 1396, 1400 (9th Cir. 1985); In re Cindy L., 17 Cal. 4th 15, 28-30, 947 P.2d 1340, 1349–50, 69 Cal. Rptr. 2d 803, 812–13 (1997).⁴ Moreover, even if there had been error, Narvios has shown no prejudice;⁵ his

¹See U.S. Const. amend. VI.

²See 28 U.S.C. § 2254(d); Lockyer v. Andrade, 538 U.S. 63, 75–76, 123 S. Ct. 1166, 1174–75, 155 L. Ed. 2d 144 (2003); Williams v. Taylor, 529 U.S. 362, 405–08, 120 S. Ct. 1495, 1519–20, 146 L. Ed. 2d 389 (2000) .

³Because the California court's decision was final before Crawford v. Washington, 541 U.S. 36, 68–69, 124 S. Ct. 1354, 1374, 158 L. Ed. 2d 177 (2004) was decided, Roberts controls the Confrontation Clause analysis. See Whorton v. Bockting, 549 U.S. 406, 409, 127 S. Ct. 1173, 1177, 167 L. Ed. 2d 1 (2007).

⁴We note that the state did exert reasonable efforts to make the victim available. See California v. Green, 399 U.S. 149, 167 n.16, 90 S. Ct. 1930, 1939 n.16, 26 L. Ed. 2d 489 (1970); id. at 189 n.22, 90 S. Ct. at 1951 n.22 (Harlan, J., concurring); Christian, 41 F.3d at 467.

⁵See Fry v. Pliler, 551 U.S. 112, 117–20, 127 S. Ct. 2321, 2325–27, 168 L.

(continued...)

confession, his testimony, and the corroborating evidence demonstrated that.

AFFIRMED.

⁵(...continued)
Ed. 2d 16 (2007); Brecht v. Abrahamson, 507 U.S. 619, 637, 113 S. Ct. 1710,
1722, 123 L. Ed. 2d 353 (1993).