

AUG 19 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DAVID SHAW, SR.

Petitioner - Appellant,

v.

ROSANNE CAMPBELL; ATTORNEY  
GENERAL OF THE STATE OF  
CALIFORNIA,

Respondents - Appellees.

No. 09-15405

D.C. No. 2:05cv-01506-MCE-  
GGH

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of California  
Morrison C. England, Jr., District Judge, Presiding

Argued and Submitted April 14, 2010  
San Francisco, California

Before: SCHROEDER and RAWLINSON, Circuit Judges, and MOODY, District  
Judge.\*\*

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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 Honorable James Maxwell Moody, Senior United States District  
Judge for the Eastern District of Arkansas, sitting by designation.

David Martin Shaw, Sr., a state prisoner, appeals the district court's denial of his 28 U.S.C. § 2254 habeas corpus petition challenging his conviction by a jury of kidnaping with intent to commit rape, forcible rape during the commission of a burglary, attempted murder, assault with intent to commit rape, second degree burglary, assault with force likely to cause great bodily injury and criminal threats. We have jurisdiction pursuant to 28 U.S.C. § 2253. We review *de novo* the district court's denial of a habeas petition. *Gill v. Ayers*, 342 F. 3d 911, 917 (9<sup>th</sup> Cir. 2003).

Shaw argues that he was denied effective assistance of counsel when his trial counsel failed to present impeachment evidence showing the victim's testimony was not credible, that her perceptions of the incident were distorted by drug and alcohol intoxication, and that she engaged in "sex for drugs."

We disagree. Shaw failed to show that his counsel's alleged deficient performance caused prejudice. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984). The overwhelming evidence at trial including the physical evidence of the victim's injuries support the jury's findings. The state court's decision rejecting Shaw's claim therefore was not "contrary to, or . . . an unreasonable application of, clearly established Federal law." 28 U.S.C. § 2254(d)(1).

**AFFIRMED.**