

SEP 02 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JAMES LEWIS DIXIE,</p> <p style="text-align: center;">Petitioner - Appellant,</p> <p>v.</p> <p>ROBERT A. HOREL, Warden,</p> <p style="text-align: center;">Respondent - Appellee.</p>
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No. 08-16447

D.C. No. 3:07-CV-00129-VRW

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Vaughn R. Walker, Chief Judge, Presiding

Submitted August 23, 2010**

Before: LEAVY, HAWKINS, and THOMAS, Circuit Judges.

California state prisoner James Lewis Dixie appeals pro se from the district court's judgment dismissing his 28 U.S.C. § 2254 habeas petition. We have jurisdiction under 28 U.S.C. § 2253, and we affirm.

* 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).

Dixie contends that the district court erred by dismissing his petition as procedurally defaulted. This contention fails because the record supports the district court's conclusion that Dixie's claims are barred by a state rule, which was actually relied upon by the state court, and that is independent of federal law and adequate to support the judgment. *See Carter v. Giurbino*, 385 F.3d 1194, 1196-1197 (9th Cir. 2004); *see also Ylst v. Nunnemaker*, 501 U.S. 797, 803 (1991) ("Where there has been one reasoned state judgment rejecting a federal claim, later unexplained orders upholding that judgment or rejecting the same claim rest upon the same ground."). Additionally, Dixie has not established "cause for the default and actual prejudice as a result of the alleged violation of federal law, or that failure to consider the claims will result in a fundamental miscarriage of justice." *See Carter*, 385 F.3d at 1196-1197.

AFFIRMED.