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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>TONY JACKIE HERNANDEZ,</p> <p>Petitioner - Appellant,</p> <p>v.</p> <p>GEORGE A. NEOTTI, Warden, et al.,</p> <p>Respondents - Appellees.</p>

No. 08-17295

D.C. No. 2:06-cv-01106-JKS

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
James K. Singleton, District Judge, Presiding

Submitted December 14, 2010**

Before: GOODWIN, WALLACE, and CLIFTON, Circuit Judges.

California state prisoner Tony Jackie Hernandez appeals from the district court's judgment denying 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).

Hernandez contends that his trial counsel provided him with ineffective assistance by (1) failing to cite to and argue for the applicability of a section of the California Vehicle Code, and (2) failing to question the arresting officers concerning their observations as to the number of times Hernandez's stoplamp flickered. We conclude that the state court's rejection of his ineffective assistance of counsel claims was not contrary to, or an unreasonable application of, clearly established United States Supreme Court precedent. *See* 28 U.S.C. § 2254(d)(1); *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984).

We construe Hernandez's additional arguments as a motion to expand the certificate of appealability. So construed, the motion is denied. *See* 9th Cir. R. 22-1(e); *see also Hiivala v. Wood*, 195 F.3d 1098, 1104-05 (9th Cir. 1999) (*per curiam*).

AFFIRMED.