

JAN 24 2011

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARCO SANTIAGO ZABALA,

Petitioner - Appellant,

v.

ROBERT HOREL, Warden,

Respondent - Appellee.

No. 09-56612

D.C. No. 5:08-cv-00647-MLG

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Marc L. Goldman, Magistrate Judge,** Presiding

Submitted January 10, 2011***

Before: BEEZER, TALLMAN, and CALLAHAN, Circuit Judges.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** This case was assigned, by the consent of the parties, to a Magistrate Judge, pursuant to 28 U.S.C. § 636(c)(1).

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

California state prisoner Marco Santiago Zabala appeals from the district court's denial of his 28 U.S.C. § 2254 habeas petition. We have jurisdiction under 28 U.S.C. § 2253, and we affirm.

Zabala contends that the state court's conclusion – that the erroneous admission of evidence at trial was harmless – was contrary to, and an unreasonable application of, clearly established Supreme Court law. However, Zabala has failed to demonstrate that the state court's application of *Chapman v. California*, 386 U.S. 18 (1967), was objectively unreasonable. *See Mitchell v. Esparza*, 540 U.S. 12, 18 (2003) (per curiam). Further, in light of the other evidence of guilt admitted at trial, Zabala has failed to establish that the trial error had a substantial and injurious effect or influence in determining the jury's verdict. *See Brecht v. Abrahamson*, 507 U.S. 619, 637 (1993).

AFFIRMED.

