

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

FEB 16 2011

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

**JOSEPH P. BECKER,**

Petitioner - Appellant,

v.

**MICHAEL MARTEL, Warden,**

Respondent - Appellee.

No. 08-55527

D.C. No. 3:07-cv-00576-JM-PCL

**MEMORANDUM\***

Appeal from the United States District Court  
for the Southern District of California  
Jeffrey T. Miller, Senior District Judge, Presiding

Argued and Submitted February 8, 2011  
Pasadena, California

Before: **KOZINSKI**, Chief Judge, **HAWKINS** and **FISHER**, Circuit Judges.

Although the sentencing judge violated clearly established federal law by imposing an upper term sentence based on Becker's "lengthy record," see Cunningham v. California, 549 U.S. 270, 288–93 (2007), the error was harmless because we have no "grave doubt" that a jury would've also found Becker's record

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

“lengthy” given his numerous prior convictions, see Butler v. Curry, 528 F.3d 624, 648 (9th Cir. 2008) (internal quotation marks omitted).

**AFFIRMED.**