

FEB 17 2011

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>ANDRE SHERMAN,</p> <p>Petitioner - Appellant,</p> <p>v.</p> <p>DWIGHT NEVEN,</p> <p>Respondent - Appellee.</p>

No. 08-15999

D.C. No. 2:05-CV-00362-JCM

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
James C. Mahan, District Judge, Presiding

Submitted February 15, 2011**

Before: CANBY, FERNANDEZ, and M. SMITH, Circuit Judges.

Nevada state prisoner Andre Sherman 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).

Sherman contends that the state court's denial of his motion to exclude unduly suggestive field and pre-trial in-court identifications violated his constitutional rights. The state court's determination that the challenged identifications were sufficiently reliable was not contrary to, or an unreasonable application of, clearly established United States Supreme Court precedent. *See* 28 U.S.C. § 2254(d)(1); *see also Neil v. Biggers*, 409 U.S. 188, 199 (1972).

We construe Sherman'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.