

APR 28 2011

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>STEVEN LEE VARNUM,</p> <p>Petitioner - Appellant,</p> <p>v.</p> <p>RICHARD KIRKLAND,</p> <p>Respondent - Appellee.</p>

No. 09-15350

D.C. No. 2:04-cv-02659-GEB-CHS

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Garland E. Burrell, District Judge, Presiding

Submitted April 20, 2011**

Before: RYMER, THOMAS, and PAEZ, Circuit Judges.

California state prisoner Steven Lee Varnum 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).

Varnum contends that the state court's denial of his motion to suppress his confession was a violation of his Fifth Amendment right to silence and counsel under *Miranda v Arizona*, 384 U.S. 436 (1966). The state court denial of Varnum's motion was not an unreasonable determination of the facts and was neither contrary to, nor an unreasonable application of, clearly established law as determined by the Supreme Court of the United States. *See* 28 U.S.C. § 2254(d); *Davis v. United States*, 512 U.S. 452, 459 (1994) (invocation of *Miranda* right to counsel must be unambiguous such that a reasonable officer in light of the circumstances would understand the statement to be invoking the right to counsel).

AFFIRMED.