

JUN 24 2011

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARCUS WEATHERSPOON,

Petitioner - Appellant,

v.

E.K. McDANIEL, Warden, and BRIAN SANDOVAL,

Respondents - Appellees.

No. 08-16582

D.C. No. 3:04-CV-00664-RLH

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Roger L. Hunt, Chief Judge, Presiding

Submitted June 15, 2011**

Before: CANBY, O'SCANNLAIN, and FISHER, Circuit Judges.

Nevada state prisoner Marcus Weatherspoon appeals from the district court's order 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).

Weatherspoon contends that his trial lawyer rendered ineffective assistance by failing to call Gloria Banks as a witness. The Nevada Supreme Court denied this claim, holding that Weatherspoon failed to demonstrate that his counsel acted unreasonably. The record shows that the state court did not unreasonably apply *Strickland v. Washington*, 466 U.S. 668 (1984). See 28 U.S.C. § 2254(d)(1). Weatherspoon is therefore not entitled to habeas relief. See *Harrington v. Richter*, 131 S. Ct. 770, 785-87 (2011).

Weatherspoon's motion to supplement the record is denied.

AFFIRMED.