FILED

OCT 05 2011

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOSHUA MOSES HELLON, Petitioner - Appellant, v. T. FELKER, Warden and ATTORNEY GENERAL OF THE STATE OF CALIFORNIA, Respondents - Appellees.	No. 10-16248 D.C. No. 2:07-cv-01816-LKK MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Lawrence K. Karlton, District Judge, Presiding

Submitted September 27, 2011**

Before: SILVERMAN, W. FLETCHER, and MURGUIA, Circuit Judges.

California state prisoner Joshua Moses Hellon appeals pro se 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).

Hellon contends that the prosecutor engaged in vindictive prosecution by amending the criminal information to add a second strike prior to his trial. The state court's rejection of Hellon's claim of vindictive prosecution was not contrary to, or an unreasonable application of, clearly established federal law, as determined by the United States Supreme Court. *See* 28 U.S.C. § 2254(d)(1); *United States v. Goodwin*, 457 U.S. 368, 381-82 (1982) (in cases involving pre-trial charging decisions, timing of decision alone is insufficient to create presumption of vindictiveness).

Furthermore, in light of the prosecutor's explanation for why she did not initially charge Hellon's second strike, the state court's decision was not based on an unreasonable determination of the facts. *See* 28 U.S.C. § 2254(d)(2).

Hellon's motion to expand the record is denied.

AFFIRMED.