

OCT 5 2011

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LOUIS JESUS COMADURAN,

Petitioner - Appellant,

v.

KEN CLARK, Warden,

Respondent - Appellee.

No. 10-56127

D.C. No. 3:09-cv-00869-BTM

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Barry T. Moskowitz, District Judge, Presiding

Submitted September 27, 2011**

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

California state prisoner Louis Jesus Comaduran appeals pro se from the district court's order denying his 28 U.S.C. § 2254 habeas petition. We have

* 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).

jurisdiction under 28 U.S.C. § 2253,*** and we affirm.

Comaduran contends that the California trial court violated his right to due process when it joined charges arising from three 2005 incidents. Contrary to Comaduran's contention, the California appellate court's rejection of this claim was neither contrary to nor an unreasonable application of federal law, nor based on an unreasonable determination of the facts. *See* 28 U.S.C. § 2254(d); *Collins v. Runnels*, 603 F.3d 1127, 1132 (9th Cir. 2010).

We construe appellant's Sixth Amendment 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*).

The district court did not abuse its discretion by determining that an evidentiary hearing was unnecessary. *See United States v. Reyes-Alvarado*, 963 F.2d 1184, 1188-89 (9th Cir. 1992).

Having resolved all issues related to this appeal, we affirm.

AFFIRMED.

*** We certify for appeal, on our own motion, the issue of whether the state court violated Comaduran's right to due process by failing to sever the charges related to the home invasion robbery from charges related to the subsequent high-speed chase. *See* 9th Cir. R. 22-1(e).