

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

OCT 5 2011

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

RONALD HURST,

Petitioner - Appellant,

v.

ROSANNE CAMPBELL, Warden;  
ATTORNEY GENERAL OF  
CALIFORNIA

Respondents - Appellees.

No. 11-15035

D.C. No. 2:06-cv-00858-RSL

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of California  
Robert S. Lasnik, District Judge, Presiding

Submitted September 27, 2011\*\*

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

California state prisoner Ronald Hurst 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.

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\* 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).

Hurst contends that his upper-term sentence violates his rights under the Sixth and Fourteenth Amendments because it was based on aggravating facts that were not found by a jury beyond a reasonable doubt. He further contends that the district court erred by failing to rule on this claim.

The California Court of Appeal's determination that Hurst's upper-term sentence is constitutional because it is based on the fact of his prior criminal convictions was not contrary to, or an unreasonable application of, clearly established federal law as determined by the Supreme Court. *See* 28 U.S.C. § 2254(d)(1); *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000). Hurst's contention that the district court failed to rule on this claim is belied by the record.

We construe Hurst'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); *Hiivala v. Wood*, 195 F.3d 1098, 1104-05 (9th Cir. 1999) (per curiam).

**AFFIRMED.**