

OCT 24 2011

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARK EDDIE McKENZIE,

Petitioner - Appellant,

v.

JAMES A. YATES, Warden,

Respondent - Appellee.

No. 08-17448

D.C. No. 1:06-cv-00450-ALA

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Arthur L. Alarcón, Circuit Judge, Presiding

Argued and Submitted September 1, 2011
San Francisco, California

Before: WALLACE, BERZON and BYBEE, Circuit Judges.

California state prisoner McKenzie 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.

McKenzie contends that his constitutional right to due process was violated when, during voir dire, the judge stated that he would have the discretion to grant probation and the prosecutor stated that the court could reduce the offense to a misdemeanor. Because McKenzie does not show that the California Court of Appeal's decision rejecting McKenzie's contentions was contrary to or an unreasonable application of Supreme Court precedent, the district court did not err in denying the petition. *See* 28 U.S.C. § 2254(d)(1). Further, McKenzie's trial was not "so fundamentally unfair" that it denied McKenzie due process under *Donnelly v. DeChristoforo*, 416 U.S. 637, 645 (1974).

AFFIRMED.