

OCT 27 2011

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>FRANK LOPEZ MARTINEZ,</p> <p>Petitioner - Appellant,</p> <p>v.</p> <p>GUY HALL,</p> <p>Respondent - Appellee.</p>
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No. 11-35070

D.C. No. 3:09-cv-00293-AC

MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Malcolm F. Marsh, District Judge, Presiding

Submitted October 25, 2011**

Before: TROTT, GOULD, and RAWLINSON, Circuit Judges.

Oregon State prisoner Frank Lopez Martinez 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.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. Appellant. P. 34(a)(2).

Lopez Martinez contends that he did not knowingly and intelligently waive his right to counsel at sentencing. Contrary to his contention, the deferential AEDPA standard of review applies to Lopez Martinez's claim. *See Harrington v. Richter*, 131 S. Ct. 770, 784 (2011) ("Where a state court's decision is unaccompanied by an explanation, the habeas petitioner's burden still must be met by showing there was no reasonable basis for the state court to deny relief.")

The state court's determination that Lopez Martinez's waiver was knowing and voluntary was not contrary to, or an unreasonable application of, clearly established federal law. *See* 28 U.S.C. § 2254(d)(1); *Iowa v. Tovar*, 541 U.S. 77, 92-93 (2004). In addition, our independent review of the record indicates that the state court's adjudication was not based on an unreasonable determination of the facts. *See* 28 U.S.C. § 2254(d)(2).

AFFIRMED.