

MAR 15 2012

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SEUM SISAVATH,

Petitioner - Appellant,

v.

STATE OF CALIFORNIA;
KEN CLARK, Warden,

Respondents - Appellees.

No. 09-15592

D.C. No. 1:06-cv-01413-VRW

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Vaughn R. Walker, District Judge, Presiding

Argued and Submitted December 1, 2011
San Francisco, California

Before: THOMAS and CLIFTON, Circuit Judges, and CARR, Senior District
Judge.**

Seum Sisavath appeals from the district court's judgment denying his
petition for habeas corpus relief under 28 U.S.C. § 2254. We affirm.

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

** The Honorable James G. Carr, Senior District Judge for the U.S.
District Court for the Northern District of Ohio, sitting by designation.

Sisavath contends that the state appellate court erred in holding that statements admitted during his trial in violation of the Confrontation Clause were harmless beyond a reasonable doubt, under *Chapman v. California*, 386 U.S. 18 (1967). We agree with the district court, for the reasons described in greater detail in that court's order, that the state court's decision was not contrary to or an unreasonable application of clearly established law as determined by the United States Supreme Court, nor was it based upon an unreasonable determination of the facts, in view of the other evidence supporting Sisavath's conviction. Because Sisavath failed to satisfy the standard set by 28 U.S.C. § 2254(d), his petition was properly denied.

Sisavath moves to expand the certificate of appealability to include two issues not certified by the district court. We decline to expand the COA to include these issues because Sisavath has not made a "substantial showing of the denial of a constitutional right" as to those claims. *See* 28 U.S.C. § 2253(c)(2); 9th Cir. R. 22-1(e). Sisavath's motion, filed on June 7, 2010, is denied.

AFFIRMED.