

APR 30 2012

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DEMARKAS S. KING,

Petitioner - Appellant,

v.

ANTHONY HEDGPETH, Warden,

Respondent - Appellee.

No. 10-17846

D.C. No. 2:08-cv-01524-GEB-  
DAD

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of California  
Garland E. Burrell, District Judge, Presiding

Argued and Submitted April 20, 2012  
San Francisco, California

Before: SCHROEDER, THOMAS, and GRABER, Circuit Judges.

Petitioner Demarkas S. King was convicted in California state court after a jury trial for murder and attempted murder. He appeals the district court's dismissal of his 28 U.S.C. § 2254 petition in which he challenged the integrity of the jury verdict. 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 state trial court held a full evidentiary hearing on Juror No. 4's multiple claims of juror misconduct, including her own belatedly perceived bias. The court found that she was not credible and that no juror misconduct had occurred. The state court described the juror's efforts to undo the verdict as "buyer's remorse."

The parties dispute whether the state court's adjudication should be reviewed under the standard set forth in 28 U.S.C. § 2254(d)(2) or (e)(1). Regardless of which provision applies, however, the decision of the state trial court remains a credibility determination that is entitled to substantial deference. *See Maxwell v. Roe*, 628 F.3d 486, 503 (9th Cir.), *cert. denied*, 132 S. Ct. 611 (2010). That ruling was neither unreasonable nor clearly erroneous, because the record contained ample support for the court's determination. Juror No. 4's version of what happened was substantially contradicted by the testimony of virtually all of the other jurors and, at most, only partially corroborated by the alternate juror and Juror No. 2.

There was no violation of King's federal rights, and the petition was properly denied.

**AFFIRMED.**