

AUG 14 2012

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOSE MIGUEL RODRIGUEZ,

Petitioner - Appellant,

v.

MATTHEW CATE,

Respondent - Appellee.

No. 11-56989

D.C. No. 3:10-cv-02651-AJB

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Anthony J. Battaglia, District Judge, Presiding

Submitted August 8, 2012**

Before: ALARCÓN, BERZON, and IKUTA, Circuit Judges.

California state prisoner Jose Miguel Rodriguez appeals pro se from the district court's judgment dismissing his 28 U.S.C. § 2254 habeas petition for failure to state a claim. We have jurisdiction under 28 U.S.C. § 2253, and we

* 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).

affirm.

The district court properly dismissed Rodriguez's petition because the court lacked jurisdiction to consider his claims that the restitution order imposed as part of his sentence violated his due process and Eight Amendment rights. *See* 28 U.S.C. § 2254(a); *Bailey v. Hill*, 599 F.3d 976, 982 (9th Cir. 2010) (“§ 2254(a) does not confer jurisdiction over a state prisoner's in-custody challenge to a restitution order imposed as part of a criminal sentence”).

AFFIRMED.