

SEP 21 2012

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CURTIS BARNETTE JOSHUA,

Petitioner - Appellant,

v.

TIMOTHY E. BUSBY, Warden,

Respondent - Appellee.

No. 09-56275

D.C. No. 5:07-cv-00978-VAP

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Virginia A. Phillips, District Judge, Presiding

Submitted September 10, 2012**

Before: WARDLAW, CLIFTON, and N.R. SMITH, Circuit Judges.

California state prisoner Curtis Barnette Joshua appeals pro se 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. App. P. 34(a)(2).

Joshua contends that there was insufficient evidence to prove that he made a criminal threat within the meaning of California Penal Code section 422 because the evidence did not establish that the victim was in sustained fear for her safety. The state court's determination that there was sufficient evidence to support the criminal threat conviction was not contrary to, or an unreasonable application of, clearly established federal law as determined by the Supreme Court. *See* 28 U.S.C. § 2254(d)(1); *Jackson v. Virginia*, 443 U.S. 307, 319 (1979).

We construe Joshua's additional arguments as a motion to expand the certificate of appealability. So construed, the motion is denied. *See* 9th Cir. R. 22-1(e); *Hiivala v. Wood*, 195 F.3d 1098, 1104-05 (9th Cir. 1999) (per curiam).

AFFIRMED.