

OCT 24 2012

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BRIAN CASWELL McCARVILL,

Petitioner - Appellant,

v.

BRIAN BELLEQUE,

Respondent - Appellee.

No. 11-35615

D.C. No. 3:03-cv-00756-ST

MEMORANDUM*

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

Submitted October 11, 2012**
Portland, Oregon

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

Brian McCarvill appeals from the district court's denial of his petition for habeas corpus. We review the district court's denial of a habeas petition *de novo*. *Ybarra v. McDaniel*, 656 F.3d 984, 989 (9th Cir. 2011). 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).

McCarvill complains that he suffered ineffective assistance of counsel that caused him to decline a plea offer that would have resulted in a much shorter prison term. We agree with the reasoning of the district court in its rejection of that claim. Notably, the evidence in the record did not support the contention that McCarvill would have accepted the plea offer but for the allegedly erroneous advice he received from his counsel. He rejected favorable plea offers even after the jury returned its guilty verdict and he had obtained new counsel.

McCarvill also contends that the district court erred when it dismissed his petition without giving him a chance to brief his other claims. But McCarvill had an opportunity to present his arguments and failed to do so. It is not the obligation of the district court to search out arguments that the petitioner does not present when he has the chance. Indeed, McCarvill similarly failed in his argument to us, for in arguing that he should have been given an additional opportunity to argue his other claims, he did not identify what those claims were, let alone establish that he suffered any prejudice because any of the claims had merit. It is not enough to assert that he might have another argument. He must demonstrate that he was prejudiced by the district court's treatment, and he did not do so.

AFFIRMED.