

DEC 06 2012

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>ERIC KENNETH DUNGAN,</p> <p>Petitioner - Appellant,</p> <p>v.</p> <p>RON BARNES, Warden,</p> <p>Respondent - Appellee.</p>

No. 11-17992

D.C. No. 2:10-cv-01191-DAD

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Dale A. Drozd, Magistrate Judge, Presiding

Submitted October 25, 2012**

Before: HUG, FARRIS, and LEAVY, Circuit Judges.

California state prisoner Eric Kenneth Dungan 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).

Dungan contends that insufficient evidence was presented at trial to support his conviction for second degree murder. We agree with the district court that the state court's determination that sufficient evidence supported Dungan's conviction was not contrary to, or an unreasonable application of, *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979), or "based on an unreasonable determination of the facts" in light of the state court record. 28 U.S.C. § 2254(d)(1) & (2); see *Harrington v. Richter*, 131 S. Ct. 770, 785 (2011); *Juan H. v. Allen*, 408 F.3d 1262, 1275 n.13 (9th Cir. 2005).¹

AFFIRMED.

¹ Dungan's May 4, 2102, unopposed motion to supplement the record is granted.