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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MAURICE V. VASQUEZ,

Petitioner - Appellant,

v.

TOM FELKER, Warden, High Desert
State Prison,

Respondent - Appellee.

No. 11-17722

D.C. No. 3:08-cv-05051-SI

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Susan Illston, District Judge, Presiding

Submitted February 11, 2013**
San Francisco, California

Before: D.W. NELSON, REINHARDT, and M. SMITH, Circuit Judges.

Petitioner-Appellant Maurice Vasquez appeals the district court's denial of

* 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).

his petition for writ of habeas corpus. We have jurisdiction under 28 U.S.C. § 2253, and we affirm.

We assume for purposes of argument, just as the California Court of Appeal did, that Vasquez's Confrontation Clause rights were violated. Nonetheless, any error was harmless because the prosecutor's questions did not have a "substantial and injurious effect or influence in determining the jury's verdict." *Brecht v. Abrahamson*, 507 U.S. 619, 631 (1993) (quoting *Kotteakos v. United States*, 328 U.S. 750, 776 (1946)). Accordingly, we affirm the district court's denial of habeas relief.

We decline to expand the certificate of appealability to include Vasquez's ineffective assistance of counsel claim because Vasquez failed to make a substantial showing of the denial of a constitutional right based on his trial counsel's performance. *See* 28 U.S.C. § 2253(c)(2).

AFFIRMED; MOTION TO EXPAND COA DENIED.