

MAR 07 2013

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

NHUT THANH VO,

Plaintiff - Appellant,

v.

ANTHONY HEDGPETH, Warden,

Defendant - Appellee.

No. 10-55967

D.C. No. 8:07-cv-01410-JHN-
VBK

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Jacqueline H. Nguyen, District Judge, Presiding

Submitted March 4, 2013**
Pasadena, California

Before: HAWKINS, THOMAS, and HURWITZ, Circuit Judges.

Nhut Thanh Vo (“Vo”) appeals the denial of his habeas petition challenging his state court conviction of murder, attempted murder, assault with a semiautomatic

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

firearm and street terrorism for the benefit of a criminal gang. We have jurisdiction pursuant to 28 U.S.C. § 1291 and affirm.

Vo argues he received ineffective assistance of counsel when his trial counsel failed to object to specific gang expert testimony. We look to the last reasoned state court decision, here from the California Court of Appeal, in determining whether relief should be granted. *Ylst v. Nunnemaker*, 501 U.S. 797, 806 (1991).

Applying *Strickland v. Washington*, 466 U.S. 668, 687 (1984), the California Court of Appeal concluded that, although Vo's lawyer should have objected to the testimony, he was not prejudiced thereby. *In re Vo*, No. G035920, 2006 WL 1793713, at *4 (Cal. Ct. App. June 30, 2006). Considering the strength of the overall case against Vo, and the peripheral nature of the gang expert testimony, we cannot say that this determination was an unreasonable application of federal law. *Harrington v. Richter*, 131 S. Ct. 770, 786 (2011); 28 U.S.C. § 2254(d)(1).

AFFIRMED.