

APR 23 2013

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RAFAEL BARRETO,

Petitioner - Appellant,

v.

WILLIAM KNIPP, Warden,

Respondent - Appellee.

No. 10-15591

D.C. No. 3:08-cv-02008-MHP

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Marilyn H. Patel, Senior District Judge, Presiding

Submitted April 19, 2013**
San Francisco, California

Before: HAWKINS, GRABER and CHRISTEN, Circuit Judges.

Rafael Barreto appeals the district court's denial of his petition for writ of habeas corpus. We review denial of Barreto's habeas petition de novo. *DeWeaver v. Runnels*, 556 F.3d 995, 997 (9th Cir. 2009).

* 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).

The last reasoned decision from state court separately analyzed both waiver of Barreto's *Miranda* rights and the voluntariness of his statements to the police. *See Colorado v. Connelly*, 479 U.S. 157, 163, 167–70 (1986). The state court therefore did not unreasonably apply clearly established federal law by conflating two distinct issues. *See* 28 U.S.C. § 2254(d).

The state court concluded that Barreto knowingly and voluntarily waived his *Miranda* rights. At worst, fairminded jurists could disagree as to whether the state court's conclusion was correct. *See Harrington v. Richter*, 131 S. Ct. 770, 786 (2011). Barreto is therefore not entitled to relief on his Fifth Amendment claim. *Id.*

Barreto has not made a substantial showing that his statements to police were coerced and therefore that his Fourteenth Amendment rights were violated. *See* 28 U.S.C. § 2253(c)(2). Therefore, we decline to issue a certificate of appealability on this issue. *See* 28 U.S.C. § 2253(c)(1)(A).

AFFIRMED.