

APR 23 2013

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RUDI ALFRED APELT,

Petitioner - Appellant,

v.

CHARLES L. RYAN, et al.,

Respondents - Appellees.

No. 12-16015

D.C. No. 2:97-cv-01249-ROS

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Roslyn O. Silver, District Judge, Presiding

Argued and Submitted April 19 , 2013
San Francisco, California

Before: BEA, SCHROEDER and SILVERMAN, Circuit Judges.

Rudi Apelt appeals the district court's denial of his petition for habeas corpus. We have jurisdiction pursuant to 28 U.S.C. §§ 1291, 2253, and we affirm.

It was not unreasonable for the state court to deny Apelt's claim for

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

ineffective assistance of counsel. Even assuming trial counsel provided ineffective assistance, Apelt has not shown that it is reasonably probable that, “but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *See Strickland v. Washington*, 466 U.S. 668, 694 (1984).

The state produced overwhelming evidence of Apelt’s culpability, as an accomplice, for first-degree murder. In particular, Anke Dorn’s testimony established Apelt knew about the plans to kill Cindy Monkman and “agreed” to them. She likewise established Apelt’s presence at the murder scene and his efforts to aid the murder’s commission. Finally, Apelt’s role in the attempted cover-up strongly implicates his role as an accomplice to Monkman’s murder.

AFFIRMED.