

JUN 30 2014

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOSEPH OLIVER DEMAGNUS,

Petitioner - Appellant,

v.

W. L. MONTGOMERY, Acting Warden,

Respondent - Appellee.

No. 13-55078

D.C. No. 5:12-cv-00013-PSG

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Philip S. Gutierrez, District Judge, Presiding

Submitted June 25, 2014**

Before: HAWKINS, TALLMAN, and NGUYEN, Circuit Judges.

California state prisoner Joseph Oliver Demagnus appeals pro se from the district court's judgment denying his 28 U.S.C. § 2254 habeas corpus petition. We have jurisdiction under 28 U.S.C. § 2253. We review a district court's denial of a

* 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).

habeas corpus petition de novo, *see Stanley v. Cullen*, 633 F.3d 852, 859 (9th Cir. 2011), and we affirm.

Demagnus contends that his trial counsel was constitutionally deficient for failing to investigate Demagnus's alibi and present the testimony of alibi witnesses at trial. The state court's rejection of this claim was not contrary to, or an unreasonable application of, *Strickland v. Washington*, 466 U.S. 668 (1984). *See* 28 U.S.C. § 2254(d)(1). In light of the overwhelming evidence that Demagnus was present at the scene of the crime, he cannot establish that there is no "reasonable argument that counsel satisfied *Strickland's* deferential standard." *See Harrington v. Richter*, 131 S. Ct. 770, 788 (2011).

We construe Demagnus's additional arguments as a motion to expand the certificate of appealability. So construed, the motion is denied. *See* 9th Cir. R. 22-1(e); *Hiivala v. Wood*, 195 F.3d 1098, 1104-05 (9th Cir. 1999) (per curiam).

AFFIRMED.