

SEP 30 2014

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GRANT HEWITT BALDERREE,

Petitioner - Appellant,

v.

JEFFREY BEARD,*

Respondent - Appellee.

No. 13-56619

D.C. No. 3:11-cv-02782-LAB

MEMORANDUM**

Appeal from the United States District Court
for the Southern District of California
Larry A. Burns, District Judge, Presiding

Submitted September 23, 2014***

Before: W. FLETCHER, RAWLINSON, and CHRISTEN, Circuit Judges.

California state prisoner Grant Hewitt Balderree appeals pro se from the district court's judgment denying his 28 U.S.C. § 2254 habeas petition. We have

* Pursuant to Federal Rule of Appellate Procedure 43(c)(2), Jeffrey Beard is substituted for his predecessor, Matthew Cate, as Secretary of the Department of Corrections and Rehabilitation.

** 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).

jurisdiction under 28 U.S.C. § 2253. We review a district court's denial of a habeas corpus petition de novo, *see Stanley v. Cullen*, 633 F.3d 852, 859 (9th Cir. 2011), and we affirm.

Balderree contends that his trial counsel was ineffective for failing to communicate with him. The state court concluded that this claim lacked merit because Balderree did not show a reasonable probability of a different outcome absent the alleged deficiency of trial counsel. 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), nor based on an unreasonable determination of facts in light of the evidence presented. *See* 28 U.S.C. § 2254(d). Moreover, because any new evidence could not be considered in federal habeas proceedings, the district court properly adjudicated Balderree's claim without conducting an evidentiary hearing. *See Gulbrandson v. Ryan*, 738 F.3d 976, 993-94 & n.6 (9th Cir. 2013), cert. denied, 134 S. Ct. 2823 (2014).

We construe Balderree'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.