

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JAN 21 2015

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

MILTON N. HAYES,

Petitioner - Appellant,

v.

ANTHONY HEDGPETH, Warden and
SALINAS VALLEY STATE PRISON,

Respondents - Appellees.

No. 12-17630

D.C. No. 5:11-cv-00161-EJD

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Edward J. Davila, District Judge, Presiding

Submitted January 12, 2015**
San Francisco California

Before: WALLACE, M. SMITH, and FRIEDLAND, Circuit Judges.

Petitioner Hayes appeals from the district court judgment denying his petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Hayes challenges his California conviction for first-degree murder, arguing that his pre-arrest

* 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).

statements to police should have been suppressed under *Miranda v. Arizona*, 384 U.S. 436 (1966). We have jurisdiction pursuant to 28 U.S.C. § 2253, and, reviewing the district court’s decision de novo, we affirm.

We must deny Hayes’s petition unless the decision of the California Court of Appeal “(1) . . . was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or (2) . . . was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.” 28 U.S.C. § 2254(d).

The decision of the California Court of Appeal was not contrary to any principle of law clearly established by Supreme Court precedent, nor did it involve an unreasonable application of any such principle. Because some of the facts in this case weigh in favor of a finding that Hayes was in custody when he was interrogated while other facts weigh against such a finding, fairminded jurists could disagree over whether Hayes was in custody. *Yarborough v. Alvarado*, 541 U.S. 652, 664–65 (2004). Thus, the California Court of Appeal’s decision was not unreasonable. *Harrington v. Richter*, 131 S. Ct. 770, 786–87 (2011). Nor was the California Court of Appeal’s decision based on an unreasonable determination of the facts. *Wood v. Allen*, 558 U.S. 290, 301 (2010).

AFFIRMED.