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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LEONARDO LEPE,

Petitioner - Appellant,

v.

DAVID B. LONG,

Respondent - Appellee.

No. 12-57219

D.C. No. 2:08-cv-00574-DDP-CW

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Dean D. Pregerson, District Judge, Presiding

Argued and Submitted April 7, 2015
Pasadena, California

Before: REINHARDT, McKEOWN, and M. SMITH, Circuit Judges.

California state prisoner Leonardo Lepe appeals from the district court's judgment denying his 28 U.S.C. § 2254 habeas petition. We have jurisdiction under 28 U.S.C. § 2253. We review de novo the district court's decision to deny a

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

habeas petition, *see Rhoades v. Henry*, 598 F.3d 495, 500 (9th Cir. 2010), and we affirm.

Lepe claims that the evidence adduced at trial was insufficient to establish the jury's findings of premeditation and deliberation that supported his first-degree murder conviction. Cal. Penal Code §§ 187(a), 189. The state court's decision rejecting this claim on the merits is entitled to deference under the Antiterrorism and Effective Death Penalty Act of 1996. *See Johnson v. Williams*, 133 S. Ct. 1088, 1096 (2013). The California Court of Appeal concluded that "there was sufficient evidence to convince a rational trial of fact, beyond a reasonable doubt, that [Lepe] committed willful, deliberate, and premeditated murder." That decision was not contrary to, or an unreasonable application of, clearly established law as determined by the United States Supreme Court, and was not based on an unreasonable determination of the facts in light of the state court record. *See* 28 U.S.C. § 2254(d); *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) ("[T]he relevant question is whether, after viewing the evidence in the light most favorable to the

prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.”).¹

AFFIRMED.

¹ Lepe also argues that the certificate of appealability should be expanded to include whether there was sufficient evidence to convict Lepe of murder in any degree. We decline to expand the certificate of appealability, although we note that the answer is inherent in the above decision. *See* 9th Cir. R. 22-1(e); *Hiivala v. Wood*, 195 F.3d 1098, 1104-05 (9th Cir. 1999) (per curiam).