

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JUN 26 2015

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

DEREK K. ANCRUM,

Petitioner - Appellant,

v.

GARY SWARTHOUT, Warden,

Respondent - Appellee.

No. 13-55827

D.C. No. 3:11-cv-02686-WQH

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
William Q. Hayes, District Judge, Presiding

Submitted June 22, 2015**

Before: HAWKINS, GRABER, and W. FLETCHER, Circuit Judges.

California state prisoner Derek K. Ancrum 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 de novo a district court's denial of a habeas corpus petition, *see Stanley v. Cullen*, 633 F.3d 852, 859 (9th Cir.

* 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)*.

2011), and we affirm.

Ancrum contends that the trial court violated his Sixth and Fourteenth Amendment rights by failing to discharge a juror who committed misconduct by communicating with a government witness. This contention fails. Under any standard of review, the record reflects that there was no reasonable probability that the communication influenced the verdict. *See Caliendo v. Warden of California Men's Colony*, 365 F.3d 691, 697 (9th Cir. 2004).

Ancrum next contends that his trial counsel was constitutionally ineffective for failing to introduce, challenge, and investigate certain evidence. In light of the overwhelming evidence of guilt, we conclude that 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); *Harrington v. Richter*, 562 U.S. 86, 105 (2011).

Ancrum's motion to expand the certificate of appealability is denied. *See* 9th Cir. R. 22-1(e); *Hiivala v. Wood*, 195 F.3d 1098, 1104-05 (9th Cir. 1999) (per curiam).

AFFIRMED.