

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SEP 2 2015

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

DE ANDRE CERRONE SCOTT,

Petitioner - Appellant,

v.

MIKE McDONALD,

Respondent - Appellee.

No. 14-16653

D.C. No. 2:10-cv-02492-WBS

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
William B. Shubb, District Judge, Presiding

Submitted August 25, 2015**

Before: McKEOWN, CLIFTON, and HURWITZ, Circuit Judges.

California State prisoner De Andre Cerrone Scott appeals pro se from the district court's judgment denying his 28 U.S.C. § 2254 habeas corpus petition challenging his 2008 convictions for murder and robbery. We have jurisdiction under 28 U.S.C. § 2253. We review de novo the district court's denial of a habeas

* 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).

corpus petition, *see Murdaugh v. Ryan*, 724 F.3d 1104, 1113 (9th Cir. 2013), and we affirm.

Scott contends that he was denied his Sixth Amendment right to a fair and impartial jury when three jurors allegedly formed an opinion of guilt outside the presence of the jury room and away from the remaining members of the jury. The state court's determination that the juror's conversation did not infect the deliberations with any sort of prejudice or bias was not contrary to, or an unreasonable application of, clearly established federal law, nor based on an unreasonable determination of the facts. *See* 28 U.S.C. § 2254(d); *Harrington v. Richter*, 562 U.S. 86, 101-02 (2011). Moreover, Scott has failed to present any evidence that would overcome the presumption that the state court's credibility findings are correct. *See* 28 U.S.C. § 2254(e)(1).

We treat Scott's briefing of additional issues as a request to expand the certificate of appealability. So treated, the request is denied. *See* 9th Cir. R. 22-1(e); *Hiivala v. Wood*, 195 F.3d 1098, 1104-05 (9th Cir. 1999) (per curiam).

AFFIRMED.