

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUL 08 2016

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

ROBERT MICHAEL HOLLENBACK,

Petitioner - Appellant,

v.

CHARLES L. RYAN and ATTORNEY
GENERAL OF THE STATE OF
ARIZONA,

Respondents - Appellees.

No. 13-17464

D.C. No. 4:10-cv-00333-FRZ

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Frank R. Zapata, Senior District Judge, Presiding

Submitted July 6, 2016**
San Francisco, California

Before: SILVERMAN and NGUYEN, Circuit Judges and GARBIS,*** Senior
District Judge.

* 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).

*** The Honorable Marvin J. Garbis, Senior District Judge for the U.S.
District Court for the District of Maryland, sitting by designation.

Robert Hollenback appeals the district court's denial of his 28 U.S.C. § 2254 habeas petition challenging his Arizona conviction for molestation of a child. We have jurisdiction pursuant to 28 U.S.C. §§ 1291 and 2253 and review de novo. *Matylinsky v. Budge*, 577 F.3d 1083, 1090 (9th Cir. 2009).

The state courts reasonably applied *Strickland v. Washington*, 466 U.S. 668 (1984), when they held that trial counsel made a reasonable tactical decision not to request a lesser-included attempt jury instruction that conflicted with Hollenback's defense that he "did not try to touch" the child. Defense counsel is not required to request instructions that are inconsistent with the defense. *See Matylinsky*, 577 F.3d at 1092; *Butcher v. Marquez*, 758 F.2d 373, 377 (9th Cir. 1985).

The request to expand the certificate of appealability is denied.

AFFIRMED.