

**FILED**

DEC 08 2016

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U.S. COURT OF APPEALS

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARIO TORRES,

Petitioner-Appellant,

v.

MARTIN BITER, Warden,

Respondent-Appellee.

No. 15-55111

D.C. No.  
2:10-cv-03537-JLS-SP

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
Josephine L. Staton, District Judge, Presiding

Argued and Submitted November 9, 2016  
Pasadena, California

Before: SCHROEDER and BYBEE, Circuit Judges, and SMITH,\*\* Chief District Judge.

Mario Torres, a California prisoner, appeals the district court's denial of his petition for writ of habeas corpus. Torres was sentenced to a total term of sixteen years to life after being convicted by a jury of first degree robbery, in violation of

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The Honorable William E. Smith, Chief United States District Judge for the District of Rhode Island, sitting by designation.

Cal. Penal Code § 211, and possession of a firearm by a felon, in violation of Cal. Penal Code § 12021(a)(1).

On appeal, Torres contends that the district court erred in concluding that he did not receive ineffective assistance of counsel during his state court proceedings. The district court reached its decision after holding an evidentiary hearing.

In that hearing, Torres's only evidence supporting his claim was his own testimony that he would have accepted a plea offer but for his counsel's incorrect advice. The district court found Torres's testimony not credible on the basis of a number of contradictory and illogical statements by Torres during that hearing. The district court's findings were not clearly erroneous. The district court properly concluded that, even assuming inadequate performance by counsel, Torres failed to show prejudice from his counsel's performance. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984).

**AFFIRMED.**