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U.S. COURT OF APPEALS

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LARRY RAY MORRISON, Petitioner - Appellant, v. MAGGIE MILLER-STOUT, Respondent - Appellee.	No. 07-35681 D.C. No. CV-06-01609-TSZ MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Thomas S. Zilly, District Judge, Presiding

Submitted February 16, 2010**

Before: FERNANDEZ, GOULD, and M. SMITH, Circuit Judges.

Washington state prisoner Larry Ray Morrison appeals from the district court's judgment denying his 28 U.S.C. § 2254 habeas petition. We have jurisdiction pursuant to 28 U.S.C. § 2253, and we affirm.

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* 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).

SMS/Research

Morrison contends the trial court violated his due process rights when it instructed the jury that the phrase "on or about January 31, 2002," as stated in the information, meant the charged offense could have occurred at any point in the three years preceding the date Morrison was charged. Morrison has not shown that the state court's rejection of this claim was either contrary to, or an unreasonable application of, clearly established federal law, or that it was based on an unreasonable determination of the facts in light of the evidence presented. *See* 28 U.S.C. § 2254(d). Even though the supplemental instruction was erroneous under state law, the record indicates it did not have a "'substantial and injurious effect or influence in determining the jury's verdict.'" *Brecht v. Abrahamson*, 507 U.S. 619, 637-38 (1993) (*quoting Kotteakos v. United States*, 328 U.S. 750, 776 (1946)); *see California v. Roy*, 519 U.S. 2, 4-6 (1996) (per curiam) (applying harmless error standard to jury instructions that omit an element of the crime).

AFFIRMED.