NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ROBERT GUY BAKER,	No. 11-15004
Petitioner - Appellant,	D.C. No. 2:07-cv-01170-JAM-JFM
v.	
MATTHEW C. KRAMER,	MEMORANDUM[*]
Respondent - Appellee.	

Appeal from the United States District Court
for the Eastern District of California
John A. Mendez, District Judge, Presiding

Argued and Submitted November 4, 2013
San Francisco, California

Before: REINHARDT, NOONAN, and WATFORD, Circuit Judges.

Petitioner Robert Baker seeks habeas relief on the ground that the admission

of Lopez's in-court identification violated his due process rights. Baker

procedurally defaulted this claim in state court, and he must therefore show cause

and prejudice to excuse the default. He attempts to do so by asserting a claim of

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[*]   This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

ineffective assistance of counsel, which requires him to show both deficient performance by counsel and resulting prejudice. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). On direct appeal, the California Court of Appeal held that, even if Baker's counsel rendered deficient performance, Baker has not shown prejudice.

We cannot say that the state court's no-prejudice determination represents an unreasonable application of *Strickland*. *See* 28 U.S.C. § 2254(d)(1); *Walker v. Martel*, 709 F.3d 925, 944 (9th Cir. 2013). The prosecutor expressly told the jury during closing arguments not to rely on Lopez's in-court identification because it was unreliable. Moreover, the jury heard testimony from three other witnesses who directly or by implication identified Baker as the shooter, which was sufficient standing alone to support Baker's conviction. To be sure, the credibility of each of these witnesses was challenged at trial. But the California Court of Appeal could reasonably conclude that Lopez's in-court identification was not the difference-maker in this case.

AFFIRMED.