

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

AUG 21 2018

FOR THE NINTH CIRCUIT

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

ERNEST DEAN CARPENTER,

No. 17-16865

Petitioner-Appellant,

D.C. No. 2:11-cv-00867-APG

v.

MEMORANDUM*

D. W. NEVEN and ATTORNEY
GENERAL FOR THE STATE OF
NEVADA,

Respondents-Appellees.

Appeal from the United States District Court
for the District of Nevada
Andrew P. Gordon, District Judge, Presiding

Submitted August 15, 2018**

Before: FARRIS, BYBEE, and N.R. SMITH, Circuit Judges.

Nevada state prisoner Ernest Dean Carpenter appeals pro se from the district court's judgment denying his 28 U.S.C. § 2254 habeas petition. We have jurisdiction under 28 U.S.C. § 2253. We review the district court's denial of a

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

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

section 2254 habeas petition de novo, *see Gonzalez v. Duncan*, 551 F.3d 875, 879 (9th Cir. 2008), and we affirm.

Carpenter challenges his sentence of life without parole for felony burglary under Nevada’s Habitual Criminal Act, Nev. Rev. Stat. § 207.010, as cruel and unusual punishment in violation of the Eighth Amendment. The Nevada Supreme Court’s decision affirming Carpenter’s sentence was not “contrary to,” nor did it involve “an unreasonable application of clearly established Federal law, as determined by the Supreme Court of the United States.” 28 U.S.C. § 2254(d)(1); *see Lockyer v. Andrade*, 538 U.S. 63, 73 (2003). Carpenter’s felony convictions stretch back three decades, and include convictions for burglary, attempted grand larceny, and being a felon in possession of a firearm. In light of the seriousness of Carpenter’s offense and prior criminal history, his sentence is not so grossly disproportionate as to present an “extraordinary case” under the Eighth Amendment. *See id.* at 77.

AFFIRMED.