NOT FOR PUBLICATION

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

THOMAS JOHNSON, Petitioner - Appellant, v. JAMES HILL, Respondent - Appellee.	No. 25-4046 D.C. No. 3:24-cv-00743-BJC-MMP MEMORANDUM[*]

Appeal from the United States District Court
for the Southern District of California
Benjamin J. Cheeks, District Judge, Presiding

Submitted October 22, 2026[**]
Pasadena, California

Before: MURGUIA, Chief Judge, JOHNSTONE, Circuit Judge, and ORRICK, District Judge.[***]

Petitioner Thomas Johnson appeals the denial of his petition for writ of habeas corpus, filed pursuant to 28 U.S.C. § 2254. Because the parties are familiar

[*] 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).

[***] The Honorable William Horsley Orrick, United States District Judge for the Northern District of California, sitting by designation.

with the factual and procedural history of the case, we do not recount them here. We have jurisdiction pursuant to 28 U.S.C. §§ 1291 and 2253(c), and we affirm.

We review de novo a district court's denial of a habeas petition. *Prescott v. Santoro*, 53 F.4th 470, 477 (9th Cir. 2022). Under the Antiterrorism and Effective Death Penalty Act ("AEDPA"), habeas relief may not be granted unless a state court's adjudication of a claim: "(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U.S.C. § 2254(d).

Johnson contends that the twenty-eight-year sentence he received, based in part on his prior out-of-state attempted armed robbery conviction, violated his Sixth Amendment rights as interpreted in *Apprendi v. New Jersey,* 530 U.S. 466, 489–90 (2000). According to Johnson, the California Court of Appeal misapprehended the facts when it concluded that Johnson admitted to personal use of a dangerous or deadly weapon during his plea colloquy, affirming an enhanced sentence based on his prior "serious felony" and first strike under California's Three Strikes Law. Cal. Penal Code § 667(a)(1), (e)(1).

We need not decide if Johnson has shown that the state court decision was contrary to clearly established federal law. Even if Johnson could establish a

constitutional violation, he fails to show prejudice from the asserted constitutional error. An *Apprendi* error will not warrant habeas relief unless it had a "substantial and injurious effect" on the sentence. *Brecht v. Abrahamson*, 507 U.S. 619, 637 (1993) (citation omitted); *Estrella v. Ollison*, 668 F.3d 593, 598–600 (9th Cir. 2011) (denying habeas relief because an *Apprendi* error was harmless). Johnson has made no attempt to establish "grave doubt" that a jury would have reached the same conclusion. *Estrella*, 668 F.3d at 598 (citation omitted).

AFFIRMED.