

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JAN 24 2008

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

JUAN JOSE RADILLO,

Petitioner - Appellant,

v.

ALBERT K. SCRIBNER, Warden,

Respondent - Appellee.

No. 07-55459

D.C. No. CV-03-07628-GAF

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Gary A. Feess, District Judge, Presiding

Argued and submitted January 9, 2008
Pasadena, California

Before: FARRIS and M. SMITH, Circuit Judges, and HOLLAND**, District
Judge.

California state prisoner Juan Jose Radillo appeals the district court's order
denying his 28 U.S.C. § 2254 petition. We have jurisdiction pursuant to 28 U.S.C.
§ 2253, and we affirm.

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

** The Honorable H. Russel Holland, Senior United States District Judge
for the District of Alaska, sitting by designation.

Radillo's petition is governed by the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”), which permits relief only if the state court decision “was contrary to, or involved an unreasonable application of, clearly established” law as determined by the United States Supreme Court. 28 U.S.C. § 2254(d)(1). We review de novo the district court's denial of a habeas petition. *Tanner v. McDaniel*, 493 F.3d 1135, 1139 (9th Cir. 2007).

Radillo contends that his Sixth Amendment right to effective assistance of counsel was denied because his trial lawyer had a conflict of interest. Radillo's trial lawyer also represented Jesus Cortez, who was charged in a separate case with the same offenses as Radillo based on the same facts. “In order to establish a violation of the Sixth Amendment [based on a conflict of interest], a defendant who raised no objection at trial must demonstrate that an actual conflict of interest adversely affected his lawyer's performance.” *Cuyler v. Sullivan*, 446 U.S. 335, 348 (1980).

The state court's decision denying Radillo's conflict of interest claim was not contrary to or an unreasonable application of *Sullivan*. Radillo failed to demonstrate that his attorney's performance was adversely affected by the actual conflict of interest. Because there was no adverse effect, Radillo's argument that he is entitled to reversal because the state trial court did not address the conflict,

even though it was aware of the conflict prior to trial, also fails. *See Campbell v. Rice*, 408 F.3d 1166, 1170 (9th Cir. 2005) (en banc) (citing *Holloway v. Arkansas*, 435 U.S. 475, 484 (1978)).

AFFIRMED.