

**SEP 27 2007**

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

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RAYMOND JOHN SANTOS, JR.,

Petitioner - Appellant,

v.

TOM MADDOCK, Interim CDC Director;  
ATTORNEY GENERAL OF THE STATE  
OF CALIFORNIA,

Respondents - Appellees.

No. 06-16561

D.C. No. CV-02-1571-FCD/JFM

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of California  
Frank C. Damrell, District Judge, Presiding

Submitted September 24, 2007\*\*

Before: CANBY, TASHIMA, and RAWLINSON, Circuit Judges

Raymond Santos, a California state prisoner, appeals the denial of his habeas corpus petition brought under 28 U.S.C. § 2254. Santos is serving the

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

\*\* This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

sentence imposed following his 1999 conviction for aggravated assault and possession of a prohibited weapon. This sentence was enhanced on the basis of a 1986 burglary conviction. Santos claims that he was denied his Sixth Amendment right to effective assistance of counsel when his state appellate attorney failed to advise him that the 1986 judgment of conviction had been reversed, and this failure resulted in the reinstatement of the 1986 conviction and the subsequent enhancement of his current sentence. As stated by the district court, Santos may not challenge his 1986 conviction because he no longer is in custody for that conviction. *See Lackawanna County Dist. Attorney v. Coss*, 532 U.S. 394, 403-04 (2001); *Nunes v. Ramirez-Palmer*, 485 F.3d 432, 443 (9th Cir. 2007), *petition for cert. filed* (U.S. Aug. 21, 2007) (No. 07-6091). We reject Santos's argument that we should apply an exception for sentences enhanced on the basis of prior convictions obtained without counsel. *See Coss*, 532 U.S. at 404.

**AFFIRMED.**