

JAN 18 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ALFRED EUGENE MACHADO,

Petitioner - Appellant,

v.

TOM CAREY; et al.,

Respondents - Appellees.

No. 07-15828

D.C. No. CV-05-00278-LKK

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Lawrence K. Karlton, Senior District Judge, Presiding

Submitted January 14, 2008**

Before: HALL, O'SCANNLAIN, and PAEZ, Circuit Judges.

California state prisoner Alfred Eugene Machado appeals pro se from the district court's judgment denying his habeas petition under 28 U.S.C. § 2254. 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 panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Machado contends that the California Board of Prison Terms' 2000 decision finding him unsuitable for parole resulted in his being incarcerated beyond the expiration date of his sentence, in violation of his plea agreement. We conclude that the California state court's decision denying this claim was not objectively unreasonable. *See Himes v. Thompson*, 336 F.3d 848, 852-53 (9th Cir. 2003); *cf. Santobello v. New York*, 404 U.S. 257 (1971).

Machado was not entitled to an evidentiary hearing on this claim. 28 U.S.C. § 2254(e); *see also Baja v. Ducharme*, 187 F.3d 1075, 1078 (9th Cir. 1999).

AFFIRMED.