

MAY 28 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DELMO FIGURA TORREFRANCA,

Petitioner - Appellant,

v.

DORA B. SCHRIRO; et al.,

Respondents - Appellees.

No. 07-15280

D.C. No. CV-05-02909-DGC

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
David G. Campbell, District Judge, Presiding

Submitted May 20, 2008**

Before: PREGERSON, TASHIMA and GOULD, Circuit Judges.

Arizona state prisoner Delmo Figura Torrefranca appeals pro se from the district court's judgment dismissing his 28 U.S.C. § 2254 petition, challenging his

* 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).

jury-trial conviction and sentence imposed for sexual contact with a minor under the age of fifteen and sexual abuse of a minor under the age of fifteen. We have jurisdiction pursuant to 28 U.S.C. §§ 1291 and 2253, and we affirm.

Torre Franca contends that his rights to confront witnesses and to equal protection were violated by the trial court's refusal to appoint an interpreter to assist his wife when she testified at trial. The state court's conclusion that Torre Franca was not prevented from cross-examining the witness is not contrary to, or an unreasonable application of, clearly established federal law. *See* 28 U.S.C. § 2254(d); *Delaware v. Fensterer*, 474 U.S. 15, 20 (1985) (the Confrontation Clause guarantees only "an *opportunity* for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish" (emphasis in original)). Furthermore, Torre Franca has failed to show that others similarly situated were treated more favorably and that any alleged disparate treatment was based on an impermissible motive. *See United States v. Estrada-Plata*, 57 F.3d 757, 760 (9th Cir. 1995). Torre Franca contends that the trial court erred by denying his motion to suppress his statements on the grounds that his waiver under *Miranda v. Arizona*, 396 U.S. 436 (1966), was involuntary and unknowing due to his cultural background and difficulties with the English language. Torre Franca further contends that the police coerced

him. We conclude that the state court's decision rejecting these claims was not contrary to, or an unreasonable application of, clearly established federal law. *See Amaya-Ruiz v. Stewart*, 121 F.3d 486, 494 (9th Cir. 1997); *Derrick v. Peterson*, 924 F.2d 813, 823 (9th Cir. 1991).

Finally, Torre Franca contends that the trial court erred by admitting the testimony of an expert witness regarding child sexual abuse witnesses. The state court did not unreasonably apply clearly established federal law because Torre Franca has not shown that the witness testimony rendered "the state proceeding so fundamentally unfair as to violate due process." *See Bueno v. Hallahan*, 988 F.2d 86, 87 (9th Cir.1993) (per curiam).

To the extent that Torre Franca challenges the conditions of his confinement in his March 17, 2008 motion, these contentions fall outside the scope of this appeal. *See Badea v. Cox*, 931 F.2d 573, 574 (9th Cir.1991).

To the extent that Torre Franca raises other contentions not certified on appeal, we construe his contentions as a motion to expand the certificate of appealability and we deny the motion. *See* 9th Cir. R. 22-1(e); *Hiivala v. Wood*, 195 F.3d 1098, 1104-05 (9th Cir.1999) (per curiam).

All other pending motions are dismissed as moot.

AFFIRMED.