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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>BRIAN KEITH CRAWFORD,</p> <p>Petitioner - Appellant,</p> <p>v.</p> <p>DIANE K. BUTLER, Warden; et al.,</p> <p>Respondents - Appellees.</p>

No. 07-16292

D.C. No. CV-03-02626-MCE

MEMORANDUM*

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

Submitted July 22, 2008**

Before: B. FLETCHER, THOMAS and WARDLAW, Circuit Judges.

California state prisoner Brian Keith Crawford appeals pro se from the district court's judgment denying 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 for first degree burglary and receiving stolen property. We have jurisdiction pursuant to 28 U.S.C. §§ 1291 and 2253, and we affirm.

Crawford contends that California Jury Instruction, Criminal No. 2.15 lessened the burden of proof by allowing the jury to infer that he was guilty of burglary based upon the possession of recently stolen property and other corroborating evidence. Reading this instruction together with the other instructions given to the jury, we agree with the district court's conclusion that the challenged instruction did not lessen the burden of proof and did not render the trial fundamentally unfair. *See Estelle v. McGuire*, 502 U.S. 62, 72-73 (1991).

Crawford also contends that his right to effective assistance of counsel was violated when the trial court denied his motions for substitution of counsel. We reject this contention because any communication breakdown appears to have been the result of Crawford's contumacy and/or tactical disagreements, and not based on an objectively reasonable belief of attorney betrayal. *See Plumlee v. Masto*, 512 F.3d 1204, 1211 (9th Cir. 2008) (en banc) (Supreme Court has never held that the Sixth Amendment is violated "when a defendant is represented by a lawyer free of actual conflicts of interest, but with whom the defendant refuses to cooperate because of dislike or distrust").

Therefore, we conclude that the state court's decision denying Crawford's claims was neither contrary to, nor an unreasonable application of, clearly established federal law. *See* 28 U.S.C. § 2254(d)(1).

AFFIRMED.