

JAN 18 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CARL LEOPOLD,

Petitioner - Appellant,

v.

MIKE KNOWLES, Warden,

Respondent - Appellee.

No. 06-17173

D.C. No. CV-01-04217-BA

MEMORANDUM\*

Appeal from the United States District Court  
for the Northern District of California  
Saundra B. Armstrong, District Judge, Presiding

Submitted January 14, 2008\*\*

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

Carl Leopold, a California state prisoner, appeals pro se from the district court's judgment denying his 28 U.S.C. § 2254 habeas petition. We have jurisdiction under 28 U.S.C. § 2253, and we affirm.

Leopold contends that the California state courts unreasonably applied

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\* 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).

clearly established federal law by denying his request for a free transcript of the entire voir dire for use on appeal. He relies on *Boyd v. Newland*, 467 F.3d 1139, 1150 (9th Cir. 2006), *cert. denied*, 127 S. Ct. 2249 (2007), in which this court held that “the state court’s refusal to provide Petitioner with the whole voir dire transcript, in the face of a plausible [*Batson v. Kentucky*, 475 U.S. 79 (1986)] claim, involved an unreasonable application of clearly established Supreme Court precedent.”

We disagree. Leopold never appealed the trial court’s denial of his initial *Batson* motions, or raised this *Batson* claim before the district court, and the issue was both waived and unexhausted. Thus, because Leopold never asserted a “plausible *Batson* claim” in his appeals or habeas petitions, the California courts did not unreasonably apply clearly established federal law in not providing him with the entire voir dire transcript. *Cf. Boyd v. Newland*, 467 F.3d at 1150.

We deny Leopold’s motion for appointment of counsel.

**AFFIRMED.**