

MAR 26 2008

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

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RONALD WOMACK,

Petitioner - Appellant,

v.

A. P. KANE,

Respondent - Appellee.

No. 07-16019

D.C. No. CV-05-01159-FCD

MEMORANDUM*

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

Argued and Submitted March 11, 2008
San Francisco, California

Before: HUG, RYMER, and RAWLINSON, Circuit Judges.

Ronald Womack, a California state prisoner, appeals the denial of his habeas corpus petition brought under 28 U.S.C. § 2254. He contends that he was entitled to specific performance of his original plea agreement, even though the original

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

agreement provided for a sentence that was illegal under California law. We have jurisdiction under 28 U.S.C. § 2253, and we affirm.

We review a denial of a habeas petition de novo. *Sass v. Cal. Bd. of Prison Terms*, 461 F.3d 1123, 1126 (9th Cir. 2006). As this petition was filed after April 24, 1996, it is subject to the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”). *Lindh v. Murphy*, 521 U.S. 320, 335-36 (1997).

To grant the writ of habeas corpus under AEDPA, Womack must show that the California State Court unreasonably applied clearly established United States Supreme Court precedent. 28 U.S.C. § 2254(d). A criminal defendant has a due process right to enforce the terms of his plea agreement. *Santobello v. New York*, 404 U.S. 257, 261-62 (1971). When a promise on which a plea rests is violated, the remedy is either specific performance of the plea agreement or the opportunity to withdraw the plea. *Id.* at 262-63. In choosing between the two, state courts are in a better position to select the appropriate remedy. *See id.*

Here, Womack refused the opportunity to withdraw his plea and demanded specific performance. However, he failed to show the California Court of Appeal unreasonably applied *Santobello* because he was still given the option to withdraw his plea. We therefore affirm the district court.

AFFIRMED.