

MAY 16 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DONALD L. CAVINESS,

Petitioner - Appellant,

v.

TOM FELKER, Warden,

Respondent - Appellee.

No. 07-16379

D.C. No. CV-04-02629-MCE/JFM

MEMORANDUM *

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

Submitted May 13, 2008**
San Francisco, California

Before: KLEINFELD and N.R. SMITH, Circuit Judges, and MILLS ***, District
Judge.

* 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).

*** The Honorable Richard Mills, Senior United States District Judge for
the Central District of Illinois, sitting by designation.

Donald L. Caviness (“Caviness”) was convicted on six counts of second-degree robbery under California law and was sentenced to 160 years to life in prison. The state courts affirmed his conviction and sentence on direct appeal and denied his petition for habeas corpus. Caviness here appeals from the district court’s denial of his petition for habeas corpus. We AFFIRM.

Caviness first argues that his Sixth Amendment right to self-representation under Faretta v. California, 422 U.S. 806 (1975), was violated. The record supports the state habeas court’s conclusion that Caviness’s request to proceed pro se was equivocal, see id. at 835, because it was made as an “impulsive response” to the denial of his motion for substituted counsel, see Jackson v. Ylst, 921 F.2d 882, 888 (9th Cir. 1990). The state court’s decision on this issue was not “contrary to, [n]or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court.” 28 U.S.C. § 2254(d)(1). The district court properly denied relief.

Caviness also argues that his right to be tried by an impartial jury, see Irvin v. Dowd, 366 U.S. 717, 722 (1961), was violated because one of the jurors lied at voir dire and was biased, but was nonetheless allowed to stay on the jury. This record does not support Caviness’s claim that the juror lied at voir dire, nor that he

was tainted by actual or implied bias. See id.; United States v. Gonzalez, 214 F.3d 1109, 1111 (9th Cir. 2000). The state court’s rejection of Caviness’s juror bias claim is not “contrary to, [n]or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court.” 28 U.S.C. § 2254(d)(1). The district court properly denied relief.

AFFIRMED.