

OCT 18 2007

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

NOT FOR PUBLICATION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

PABLO LOPEZ-CHAVEZ,

Petitioner - Appellant,

v.

ROBERT LAMPERT, Superintendent of
SRCI,

Respondent - Appellee.

No. 06-35673

D.C. No. CV-03-01047-JMS

MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Janice M. Stewart, Magistrate Judge, Presiding

Submitted September 28, 2007**
Portland, Oregon

Before: SCHROEDER, Chief Judge, SILVERMAN and BYBEE, Circuit Judges.

Pablo Lopez-Chavez appeals from the denial of his petition for habeas relief under 28 U.S.C. § 2254. Lopez-Chavez contends that he was denied his Sixth

* 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).

Amendment right to effective assistance of counsel as a result of his attorney's failure to pursue an intoxication defense and advise him about such a defense. Lopez-Chavez has not demonstrated that he was prejudiced by this failure, in light of the overwhelming evidence that Lopez-Chavez was not in fact intoxicated on the night of the murder. He is therefore not entitled to habeas relief. *See Strickland v. Washington*, 466 U.S. 668, 691-92 (1984).

We construe the briefing of uncertified issues as a motion to expand the certificate of appealability, *see Cooper-Smith v. Palmateer*, 397 F.3d 1236, 1245 (9th Cir. 2005), and we deny the motion.

AFFIRMED.