

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

OCT 22 2007

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

CLARANCE LE-ROND WILLIAMS,  
a/k/a CLARENCE LEROND WILLIAMS,

Petitioner - Appellant,

v.

G.J. GIURBINO, Warden,

Respondent - Appellee.

No. 06-55328

D.C. No. CV-03-01305-AHM

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
A. Howard Matz, District Judge, Presiding

Argued and Submitted September 26, 2007  
Pasadena, California

Before: WALLACE, T.G. NELSON, and N.R. SMITH, Circuit Judges.

Clarance Le-Rond Williams, a California state prisoner, appeals from the district court's denial of his 28 U.S.C. § 2254 habeas corpus petition challenging his jury conviction for arson. The district court certified two issues for appeal. We have jurisdiction pursuant to 28 U.S.C. § 2253.

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

We review de novo the district court's denial of a habeas corpus petition. *Tanner v. McDaniel*, 493 F.3d 1135, 1139 (9th Cir. 2007). The Anti-Terrorism and Effective Death Penalty Act of 1996 (“AEDPA”) also governs our review. Under the AEDPA, a habeas petition may be granted only if the state court's decision was either contrary to or an unreasonable application of clearly established federal law, as determined by the United States Supreme Court, or was based on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding. *Schroeder v. Tilton*, 493 F.3d 1083, 1086 (9th Cir. 2007); 28 U.S.C. § 2254(d)(1).

Williams conceded, both in his opening brief and at oral argument, that, as found by the state trial court, he was let out of the patrol car at the scene of the fire, was not placed in handcuffs, and was allowed some freedom of movement. “All of these objective facts are consistent with an interrogation environment in which a reasonable person would have felt free to terminate the interview and leave.” *Yarborough v. Alvarado*, 541 U.S. 652, 664-65 (2004). Even though “[f]airminded jurists could disagree” about whether Williams was in custody at the time of the questioning, we cannot say that the state court’s determination on this issue was contrary to or an unreasonable application of clearly established federal law. *See id.*; *Thompson v. Keohane*, 516 U.S. 99, 102 (1995) (noting that *Miranda* warnings

are required only when a defendant is both in custody and interrogated by the police).

The record indicates that the state court seated three alternate jurors and allowed Williams and the state to each exercise three peremptory challenges. The process used by the state trial court provided Williams with the peremptory challenges to which he was entitled under state law. *See* Cal. Penal Code § 1089 (providing that “the prosecution and the defendant shall each be entitled to as many peremptory challenges to the alternate jurors as there are alternate jurors called”). The process was not, therefore, contrary to or an objectively unreasonable application of clearly established federal law. *See Ross v. Oklahoma*, 487 U.S. 81, 89 (1988) (holding that “the ‘right’ to peremptory challenges is ‘denied or impaired’ only if the defendant does not receive that which state law provides”); *see also Delgado v. Lewis*, 223 F.3d 976, 982 (9th Cir. 2000) (noting that where no reasoned state court decision has ever addressed a claim, we must independently evaluate the claim).

**AFFIRMED.**