

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

NOV 15 2007

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

GARY GENE ANGEL,	)	No. 06-15414
	)	
Petitioner-Appellant,	)	D.C. No. CV-02-00247-FCD-PAN
	)	
v.	)	<b>MEMORANDUM*</b>
	)	
E. ROE, Warden,	)	
	)	
Respondent-Appellee.	)	
_____	)	

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

Submitted November 6, 2007\*\*  
San Francisco, California

Before: FERNANDEZ and McKEOWN, Circuit Judges, and TRAGER,<sup>\*\*\*</sup>  
District Judge.

Gary Gene Angel appeals the district court's denial of his petition for habeas

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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. Fed. R. App. P. 34(a)(2).

\*\*\*The Honorable David G. Trager, Senior United States District Judge for the Eastern District of New York, sitting by designation.

corpus relief. See 28 U.S.C. § 2254. We affirm.

Angel seeks habeas corpus relief on the basis that counsel was ineffective because of a failure to properly pursue plea negotiations. Principally, he alleges that counsel improperly failed to pick up a written plea offer from the prosecutor's office in time to bring it to Angel's attention so that he could consider accepting it.<sup>1</sup>

To obtain relief on the basis of ineffective assistance of counsel, Angel must show both that counsel's representation was deficient,<sup>2</sup> and that there was a "reasonable probability" that in the absence of counsel's alleged error the result of the proceeding would have been different.<sup>3</sup> The state courts determined that counsel was not ineffective.<sup>4</sup> In order to overturn the state court decisions, we would, at the very least, have to decide that counsel was ineffective. More than that, we would have to determine that the state courts either unreasonably

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<sup>1</sup>Counsel was not made aware of the fact that the written plea offer was available until after it had expired.

<sup>2</sup>See Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674 (1984). To be deficient, counsel's performance must have fallen "below an objective standard of reasonableness." Id. at 688, 104 S. Ct. at 2064.

<sup>3</sup>Id. at 694, 104 S. Ct. at 2068.

<sup>4</sup>The Strickland test applies to claims arising out of the plea process. See Hill v. Lockhart, 474 U.S. 52, 57–59, 106 S. Ct. 366, 369–70, 88 L. Ed. 2d 203 (1985); Turner v. Calderon, 281 F.3d 851, 879 (9th Cir. 2002).

determined the facts,<sup>5</sup> or that they made decisions that were contrary to or an unreasonable application of federal law.<sup>6</sup> And more than that, a determination that the state courts erred would not be enough; we would have to determine that their application of the law was “not only erroneous, but objectively unreasonable.”

Yarborough v. Gentry, 540 U.S. 1, 5, 124 S. Ct. 1, 4, 157 L. Ed. 2d 1 (2003) (per curiam); see also Middleton v. McNeil, 541 U.S. 433, 436, 124 S. Ct. 1830, 1832, 158 L. Ed. 2d 701 (2004) (per curiam); Nunes, 350 F.2d at 1051.

On this record, we cannot say that the state courts unreasonably determined that counsel’s performance was not deficient. That being so, we need go no further and must affirm.

AFFIRMED.

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<sup>5</sup>See 28 U.S.C. § 2254(d)(2); see also Williams v. Taylor, 529 U.S. 362, 386, 120 S. Ct. 1495, 1509, 146 L. Ed. 2d 389 (2000).

<sup>6</sup>See 28 U.S.C. § 2254(d)(1); see also Lockyer v. Andrade, 538 U.S. 63, 73, 75, 123 S. Ct. 1166, 1173, 1174, 155 L. Ed. 2d 144 (2003); Nunes v. Mueller, 350 F.3d 1045, 1051 (9th Cir. 2003).