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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>PETER A. KING,</p> <p style="text-align: center;">Petitioner - Appellant,</p> <p>v.</p> <p>JEAN HILL, Superintendent, Snake River Correctional Institution,</p> <p style="text-align: center;">Respondent - Appellee.</p>
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No. 08-35577

D.C. No. 1:06-CV-00879-PA

MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Owen M. Panner, District Judge, Presiding

Submitted February 18, 2009**

Before: BEEZER, FERNANDEZ, and W. FLETCHER, Circuit Judges.

Peter A. King, an Oregon state prisoner, appeals the denial of his 28 U.S.C. § 2254 habeas corpus petition challenging his conviction and 130-month sentence for two counts of first degree robbery with a firearm, four counts of second degree

* 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).

robbery, and one count of being a felon in possession of a firearm. He claims that counsel provided ineffective assistance in failing to object to consecutive sentencing. We have jurisdiction under 28 U.S.C. § 2253, and we affirm.

We review de novo the denial of a habeas corpus petition. *Young v. Runnels*, 435 F.3d 1038, 1042 (9th Cir. 2006). Habeas relief may be granted only if the state court’s decision “was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court.” *Id.* (quoting 28 U.S.C. § 2254(d)(1)).

The trial court had discretion to impose consecutive sentences for offenses against different victims. *See* Or. Rev. Stat. § 137.123(5) (governing offenses “arising out of a continuous and uninterrupted course of conduct”), *invalidated by State v. Hagberg*, 190 P.3d 1209 (Or. 2008). The indictment named different victims for Counts 1 and 2, the two counts of first degree robbery, and King admitted during plea proceedings that there were two different victims. Following his guilty plea, the trial court imposed 90-month terms on Counts 1 and 2, with 40 months of the term on Count 2 to run consecutively to the term on Count 1. The court imposed concurrent terms on the other five counts.

King contends that counsel was ineffective in failing to object because the trial court stated that there were multiple victims but failed to make a required

finding that the harm to the two different victims was the basis for its decision to impose consecutive sentences. *See* Or. Rev. Stat. § 137.123(5)(b) (providing that court may impose a consecutive term for an offense “only if the court finds” that the offense “caused . . . injury or harm to a different victim”).

As respondent argues, counsel could reasonably have understood the trial court’s findings to address the statutory requirements or could reasonably have concluded that, in light of those findings, it would be futile to object. *See Snodgrass v. Lampert*, 150 P.3d 1109, 1112-13 (Or. App.), *review denied*, 157 P.3d 788 (Or. 2007). We therefore affirm the district court’s conclusion that King established neither that counsel’s representation fell below an objective standard of reasonableness, nor that the result at sentencing would have been different. *See Young*, 435 F.3d at 1042 (9th Cir. 2006) (quoting *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984)).

AFFIRMED.