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U.S. COURT OF APPEALS

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ANTHONY GLENN VIRGLE, Petitioner - Appellant, v. DIRECTOR OF THE CALIFORNIA DEPARTMENT OF CORRECTIONS, Respondent - Appellee.	No. 07-55412 D.C. No. CV-05-00806-SVW MEMORANDUM[*]

Appeal from the United States District Court
for the Central District of California
Stephen V. Wilson, District Judge, Presiding

Submitted April 13, 2009[**]

Before: GRABER, GOULD and BEA, Circuit Judges.

California state prisoner Anthony Glenn Virgle appeals from the district court's judgment denying his 28 U.S.C. § 2254 petition. We have jurisdiction pursuant to 28 U.S.C. §§ 1291 and 2253, and we affirm.

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

KR/Research

Because the record supports Virgle's assertion that he timely deposited with prison authorities his motion for an extension of time to file a notice of appeal, evincing his intent to appeal the judgment of the district court, we reject the state's contention that the appeal should be dismissed as untimely. *See Estrada v. Scribner*, 512 F.3d 1227, 1236 (9th Cir. 2008).

Virgle contends that there was insufficient evidence to support his two convictions for kidnaping to commit robbery. We conclude that the state court's decision rejecting this claim was neither contrary to, nor an unreasonable application of, clearly established federal law, as determined by the United States Supreme Court. *See* 28 U.S.C. § 2254(d); *see also Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *Briceno v. Scribner*, 555 F.3d 1069, 1077-78 (9th Cir. 2009).

Virgle's motion to strike a portion of appellee's supplemental excerpts of record is granted. *See* Fed. R. App. P. 10; *see also Lowry v. Barnhart*, 329 F.3d 1019, 1024-25 (9th Cir. 2003). Virgle's motion to strike appellee's answering brief is denied.

AFFIRMED.