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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>RAUL A. GARIBAY,</p> <p>Petitioner - Appellant,</p> <p>v.</p> <p>GAIL LEWIS, Warden,</p> <p>Respondent - Appellee.</p>
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No. 07-16713

D.C. No. CV-03-01808-CW

MEMORANDUM\*

Appeal from the United States District Court  
for the Northern District of California  
Claudia Wilken, District Judge, Presiding

Submitted April 13, 2009\*\*

Before: GRABER, GOULD, and BEA, Circuit Judges.

California state prisoner Raul A. Garibay 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).

Garibay contends that the introduction of evidence regarding prior acts of sexual misconduct and domestic violence to show propensity violated his due process rights. We conclude that the state court's decision rejecting this claim was not contrary to, or an unreasonable application of, clearly established federal law, as determined by the United States Supreme Court. *See* 28 U.S.C. § 2254(d); *Estelle v. McGuire*, 502 U.S. 62, 75 n.5 (1991); *Alberni v. McDaniel*, 458 F.3d 860, 863-67 (9th Cir. 2006).

Garibay also contends that the state trial court's jury instructions deprived him of his due process rights because the instructions permitted the jury to find him guilty by a standard of a preponderance of the evidence rather than beyond a reasonable doubt. We conclude that the state court's decision rejecting this claim was not contrary to, or an unreasonable application of, clearly established federal law, as determined by the United States Supreme Court. *See* 28 U.S.C. § 2254(d); *Estelle*, 502 U.S. at 69-74.

Garibay's application to broaden the certificate of appealability and his motion to augment that application are denied. *See Hiivala v. Wood*, 195 F.3d 1098, 1104-05 (9th Cir. 1999) (per curiam).

**AFFIRMED.**