

MAY 04 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GEORGE I. JOHNSON,	)	No. 07-55547
	)	
Petitioner – Appellant,	)	D.C. No. CV-06-01809-GHK
	)	
v.	)	<b>MEMORANDUM*</b>
	)	
D. SISTO, Warden,	)	
	)	
Respondent – Appellee.	)	
	)	
_____	)	

Appeal from the United States District Court  
for the Central District of California  
George H. King, District Judge, Presiding

Submitted April 14, 2009\*\*  
Pasadena, California

Before: FERNANDEZ, SILVERMAN, and CALLAHAN, Circuit Judges.

George I. Johnson appeals the district court’s denial of his petition for habeas corpus relief. See 28 U.S.C. § 2254. 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. Fed. R. App. P. 34(a)(2).

The sole issue on this appeal is whether the presence in the courtroom gallery of a substantial number of uniformed and armed California Highway Patrol officers<sup>1</sup> as voluntary spectators at the trial violated Johnson’s right to a fair trial. However, the state did not ask the officers to be there, nor were they disruptive or ill behaved.<sup>2</sup>

The Supreme Court has instructed us that there is no clearly established Supreme Court law on the subject of nondisruptive “spectator conduct” as opposed to “state-sponsored courtroom practices.” Carey v. Musladin, 549 U.S. 70, 76, 127 S. Ct. 649, 653, 166 L. Ed. 2d 482 (2006). Therefore, the decision of the California courts cannot have been “contrary to or an unreasonable application of clearly established federal law.” Id. at 77, 127 S. Ct. at 654.

AFFIRMED.

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<sup>1</sup>The trial involved a shooting at a California Highway Patrol officer.

<sup>2</sup>By the way, both the prosecutor and the defense told the jury that it should not be affected by the mere presence of the officers.