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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

WILLIAM TERRY BRADFORD,

Petitioner-Appellant,

vs.

GEORGE J. GIURBINO,

Respondent-Appellee.

No. 08-56036

D.C. No. CV-06-4529-AHM

MEMORANDUM *

Appeal from the United States District Court
Central District of California
A. Howard Matz, District Judge, Presiding

Submitted July 6, 2009**
Pasadena, California

Before: FERNANDEZ and N.R. SMITH, Circuit Judges, and MILLS, District Judge.***

William Terry Bradford appeals the district court's denial of his petition under

* 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).

*** The Honorable Richard Mills, Senior United States District Judge for the Central District of Illinois, sitting by designation.

28 U.S.C. § 2254, wherein Bradford alleged that his due process rights were violated as a result of the thirteen-year delay between his wife’s murder and his trial for that crime. We affirm.

Bradford has not shown that the state court decision “was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.” 28 U.S.C. § 2254(d)(2). Nor has he rebutted the state courts’ factual findings by clear and convincing evidence. 28 U.S.C. § 2254(e)(1); *Taylor v. Maddox*, 366 F.3d 992, 1000-01 (9th Cir. 2004). Given the state courts’ findings, which we presume to be correct, *see id.*, Bradford has not shown that he suffered any actual, non-speculative prejudice. *United States v. Lovasco*, 431 U.S. 783, 789-90 (1977) (“[P]roof of prejudice is generally a necessary but not sufficient element of a due process claim.”); *United States v. Barken*, 412 F.3d 1131, 1134 (9th Cir. 2005) (“[A] defendant must prove that he suffered actual, non-speculative prejudice from the delay, meaning proof that demonstrates exactly how the loss of evidence or witnesses was prejudicial.”) (citations and internal quotation marks omitted).

Even if he could show that he suffered actual prejudice, Bradford is unable to demonstrate that the state court adjudication was “contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States.” *See* 28 U.S.C. § 2254(d)(1). Accordingly,

Bradford has not established that he is entitled to relief under § 2254.¹

AFFIRMED.

¹We decline to consider the uncertified issue raised by the Petitioner.