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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ALEXANDER JONES, Petitioner - Appellant, v. MARK NOOTH, Respondent - Appellee.	No. 11-35008 D.C. No. 6:07-cv-01474-AA MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Ann L. Aiken, Chief Judge, Presiding

Submitted September 27, 2011**

Before: SILVERMAN, W. FLETCHER, and MURGUIA, Circuit Judges.

Oregon state prisoner Alexander Jones appeals from the district court's judgment dismissing his 28 U.S.C. § 2254 habeas petition. We have jurisdiction under 28 U.S.C. § 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 concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Jones contends the district court erred in concluding that he procedurally defaulted his claim that his trial lawyer rendered ineffective assistance of counsel. Before the Oregon Supreme Court, however, Jones did not fairly present his claim that counsel failed to raise Jones's cognitive deficiencies to negate the specific intent element of the charged offenses, *see Castillo v. McFadden*, 399 F.3d 993, 998-1000 (9th Cir. 2005), and Jones would now be barred from doing so, *see* Or. Rev. Stat. § 138.510(3); *Smith v. Baldwin*, 510 F.3d 1127, 1138-39 (9th Cir. 2007). Jones does not contend that there was cause for and prejudice from his default, or that a fundamental miscarriage of justice will arise from the district court's failure to consider the merits of his claim. *See Smith*, 510 F.3d at 1139.

AFFIRMED.