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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>KINGSTON WONEGIE RANGE,</p> <p>Petitioner - Appellant,</p> <p>v.</p> <p>JAMES M. SCHOMIG; et al.,</p> <p>Respondents - Appellees.</p>
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No. 08-15699

D.C. No. 2:03-CV-01608-RLH

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Roger L. Hunt, Chief District Judge, Presiding

Submitted October 13, 2009**

Before: B. FLETCHER, LEAVY, and RYMER, Circuit Judges.

Nevada state prisoner Kingston Wonegie Range appeals pro se from the district court’s judgment denying his 28 U.S.C. § 2254 habeas petition. We have jurisdiction pursuant to 28 U.S.C. § 2253, and we affirm.

* 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).

Range contends that trial counsel was ineffective in failing to cross-examine the victim regarding prior inconsistent statements and to present an investigator's report concerning these statements. However, counsel thoroughly developed these inconsistencies through cross-examination of other witnesses and in closing argument. Accordingly, the district court did not err in concluding that Range failed to establish either deficient performance or resulting prejudice under the standard announced in *Strickland v. Washington*, 466 U.S. 668 (1984).

Range further contends that the district court erred in failing to grant an evidentiary hearing regarding alleged new evidence. However, because Range failed to "allege facts which, if proven, would entitle him to relief," *Gonzalez v. Plier*, 341 F.3d 897, 903 (9th Cir. 2003), he was not entitled to an evidentiary hearing.

We construe Range's briefing of uncertified issues as a motion to expand the certificate of appealability, and we deny the motion. *See* 9th Cir. R. 22-1(e); *see also Hiivala v. Wood*, 195 F.3d 1098, 1104-05 (9th Cir. 1999) (per curiam).

AFFIRMED.