

DEC 15 2010

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ISAAC GASTON,

Petitioner - Appellant,

v.

BEN CURRY, Warden,

Respondent - Appellee.

No. 07-55983

D.C. No. CV-06-04785-DOC

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
David O. Carter, District Judge, Presiding

Argued and Submitted November 4, 2010
Pasadena, California

Before: RAWLINSON and M. SMITH, Circuit Judges, and JONES, District
Judge.**

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

** The Honorable Robert Clive Jones, U.S. District Judge for the District
of Nevada, sitting by designation.

Petitioner Isaac Gaston (Gaston) challenges the district court's denial of his federal habeas petition premised on the prosecutor's use of peremptory challenges to exclude African-American jurors from Gaston's state court trial.

The California Court of Appeal's determination that the prosecutor was willing to accept an African-American juror, and used peremptory challenges to exclude two African-American prospective jurors based on one prospective juror's demeanor and the other prospective juror's responses to questions regarding his views of law enforcement was not unreasonable. *See Cook v. LaMarque*, 593 F.3d 810, 816 (9th Cir. 2010) (“[W]e must defer to the [California Court of Appeal's] conclusion that there was no discrimination unless that finding was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.”) (citation, footnote reference, and internal quotation marks omitted); *see also Kesser v. Cambra*, 465 F.3d 351, 359 (9th Cir. 2006) (“To accept a prosecutor's stated nonracial reasons, the court need not agree with them. The question is not whether the stated reason represents a sound strategic judgment, but whether counsel's race-neutral explanation for a peremptory challenge should be believed.”) (citation and internal quotation marks omitted).

Gaston's proffered comparative juror analysis does not establish that the

California Court of Appeal's decision was unreasonable. *See Cook*, 593 F.3d at 817.

AFFIRMED.