

OCT 27 2010

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MIKHAIL KHAIMCHAYEV,

Petitioner - Appellant,

v.

A. HEDGPETH,

Respondent - Appellee.

No. 08-56563

D.C. No. 2:03-cv-01262-ODW

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Otis D. Wright, II, District Judge, Presiding

Submitted October 19, 2010**

Before: O'SCANNLAIN, TALLMAN and BEA, Circuit Judges.

California state prisoner Mikhail Khaimchayev appeals from the district court's judgment denying his 28 U.S.C. § 2254 habeas petition. We have jurisdiction under 28 U.S.C. § 2253, and we affirm.

Khaimchayev contends that his trial counsel was ineffective for failing to

* 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).

present certain psychiatric and lay evidence regarding his mental condition. This contention is belied by the record. Counsel presented a defense that Khaimchayev's mental state precluded him from acting with the requisite premeditation and deliberation necessary to support a conviction for first-degree murder. Counsel's decision was an exercise of sound trial strategy and did not fall below an objective standard of reasonableness. *See Williams v. Woodford*, 384 F.3d 567, 610-611 (9th Cir. 2004). Accordingly, the state court's decision rejecting Khaimchayev's claim of ineffective assistance of counsel was not contrary to, and did not involve an unreasonable application of, clearly established federal law, as determined by the Supreme Court of the United States; nor was it an unreasonable determination of the facts in light of the evidence presented. *See* 28 U.S.C. § 2254(d); *see also Strickland v. Washington*, 466 U.S. 668, 687-88 (1984).

AFFIRMED.