

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAR 9 2020

FOR THE NINTH CIRCUIT

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

ENVER KARAFILI,

Petitioner-Appellant,

v.

RONALD DAVIS, Warden,

Respondent-Appellee.

No. 19-55704

D.C. No. 3:18-cv-02418-LAB-NLS

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Larry A. Burns, District Judge, Presiding

Submitted March 3, 2020**

Before: MURGUIA, CHRISTEN, and BADE, Circuit Judges.

California state prisoner Enver Karafili appeals pro se from the district court's order dismissing his 28 U.S.C. § 2254 petition as successive. We have jurisdiction under 28 U.S.C. § 2253. We review de novo, *see Wentzell v. Neven*, 674 F.3d 1124, 1126 (9th Cir. 2012), and we affirm.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

The district court granted a certificate of appealability on whether Karafili's instant section 2254 petition should have been dismissed as successive under 28 U.S.C. § 2244(b)(3)(A). Karafili fails to make any argument that his petition is not successive in his opening brief, and therefore has waived this issue. *See Koerner v. Grigas*, 328 F.3d 1039, 1048 (9th Cir. 2003) ("In general, [w]e will not ordinarily consider matters on appeal that are not specifically and distinctly argued in appellant's opening brief" (alteration in original) (internal quotation marks omitted)). Accordingly, we affirm the district court's dismissal of Karafili's petition as successive.

On appeal, Karafili solely raises arguments related to the merits of his petition, which were not included in the certificate of appealability. We treat these arguments as a motion to expand the certificate of appealability, and deny the motion. *See* 9th Cir. R. 22-1(e); *Hiivala v. Wood*, 195 F.3d 1098, 1104-05 (9th Cir. 1999).

AFFIRMED.