

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 23 2021

FOR THE NINTH CIRCUIT

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

MARTIN SALAZAR CASTRO,

No. 20-15274

Petitioner-Appellant,

D.C. No.

v.

2:16-cv-01237-MMD-EJY

RENEE BAKER, Warden; ATTORNEY
GENERAL FOR THE STATE OF NE-
VADA,

MEMORANDUM*

Respondents-Appellees.

Appeal from the United States District Court
for the District of Nevada
Miranda M. Du, Chief District Judge, Presiding

Submitted November 19, 2021**
San Francisco, California

Before: McKEOWN and GOULD, Circuit Judges, and MOLLOY,*** District
Judge.

Martin Salazar Castro appeals the district court's denial of his 28 U.S.C.

* 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 Honorable Donald W. Molloy, United States District Judge for
the District of Montana, sitting by designation.

§ 2254 habeas corpus petition challenging his 2010 conviction for sexual assaults, attempted sexual assault, conspiracy to commit sexual assault, and kidnapping.

Assuming, without deciding, that the state trial court improperly denied Castro's motion to suppress, Castro has nonetheless failed to demonstrate that the admission of his statement had a "substantial and injurious effect or influence in determining the jury's verdict" in light of the overwhelming evidence in support of his conviction. *Brecht v. Abrahamson*, 507 U.S. 619, 637–38 (1993). *See Cunningham v. Wong*, 704 F.3d 1143, 1165 (9th Cir. 2013) (denying habeas relief where the state court concluded that a defendant's statement, in which he "did not actually confess to the crime," was harmless, because the statement "at most" undermined the defendant's credibility). The district court therefore properly denied Castro's petition. *See* 28 U.S.C. § 2254(d).

Because we do not reach the question of whether Castro's statement was involuntary, Castro's Motion to Expand the Record and Transmit Physical Exhibit, Dkt. 18, is **DENIED** as moot.

AFFIRMED.