

JAN 07 2011

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

| |
|--|
| <p>MARQUIS JUAN JOHNSON,</p> <p>Petitioner - Appellant,</p> <p>v.</p> <p>STUART J. RYAN,</p> <p>Respondent - Appellee.</p> |
|--|

No. 08-55516

D.C. No. 8:05-cv-00331-ABC

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Audrey B. Collins, Chief Judge, Presiding

Submitted December 14, 2010**

Before: GOODWIN, WALLACE, and THOMAS, Circuit Judges.

California state prisoner Marquis Juan Johnson 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.

Johnson contends that there is insufficient evidence to support the jury's

* 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).

verdicts convicting him of robbery and false imprisonment. The California court's conclusion that there was sufficient evidence to allow a reasonable trier of fact to find Johnson guilty beyond a reasonable doubt was not contrary to, or an unreasonable application of, clearly established Supreme Court law, and was not an unreasonable determination of the facts in light of the evidence. *See* 28 U.S.C. § 2254(d); *see also Jackson v. Virginia*, 443 U.S. 307, 319 (1979).

Johnson also contends that he was denied due process when the jury was provided with an instruction which permitted reliance on an uncharged conspiracy as a basis for the robbery and false imprisonment charges. However, the record supports that Johnson had adequate notice of the uncharged conspiracy theory to defend against it. Therefore, the California court's conclusion that Johnson's due process rights were not violated was not contrary to, or an unreasonable application of, clearly established Supreme Court law. *See* 28 U.S.C. § 2254(d); *see also Cole v. Arkansas*, 333 U.S. 196, 201 (1948); *Stephens v. Borg*, 59 F.3d 932, 935-36 (9th Cir. 1995).

We grant Johnson's motion for judicial notice.

AFFIRMED.