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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARK SANDOVAL,

Petitioner - Appellant,

v.

C. K. PLILER, Warden, et al.,

Respondents - Appellees.

No. 08-56630

D.C. No. 8:04-CV-00360-FMC-AJW

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Florence-Marie Cooper, District Judge, Presiding

Submitted December 14, 2010**

Before: SKOPIL, FARRIS, and LEAVY, Circuit Judges.

California state prisoner Mark Sandoval appeals from the district court's judgment denying his 28 U.S.C. § 2254 petition. We have jurisdiction pursuant to 28 U.S.C. § 2253, and we affirm.

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

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

Sandoval contends his constitutional right to present a defense was violated when the state trial court refused to instruct the jury on imperfect self-defense. As an initial matter, we reject the State's contention that Sandoval failed to exhaust this claim as it was fairly presented in his petition for review filed in the California Supreme Court. *See Baldwin v. Reese*, 541 U.S. 27, 32 (2004) (noting petitioner may raise a federal issue by citing to applicable federal law).

On the merits, we deny relief because Sandoval fails to demonstrate the state court's decision was contrary to or an unreasonable application of clearly established federal law as determined by the United States Supreme Court, or an unreasonable determination of the facts. *See* 28 U.S.C. §§ 2254(d)(1), (2). There was not sufficient evidence from which a jury could reasonably have concluded that Sandoval had an actual but unreasonable belief that his life was in imminent danger. *See Menendez v. Terhune*, 422 F.3d 1012, 1028-30 (9th Cir. 2005) (no constitutional violation when state trial court refused to instruct on imperfect self-defense that was not supported by sufficient evidence); *Solis v. Garcia*, 219 F.3d 922, 929 (9th Cir. 2000) (per curiam) (no constitutional error in refusing to give an instruction not supported by evidence).

AFFIRMED.