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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>MIGUEL GARZA,</p> <p>Petitioner - Appellant,</p> <p>v.</p> <p>SCOTT KERNAN and ATTORNEY GENERAL STATE OF CALIFORNIA,</p> <p>Respondents - Appellees.</p>

No. 09-17517

D.C. No. 2:04-cv-00625-GEB-
JFM

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Garland E. Burrell, District Judge, Presiding

Submitted February 15, 2011**

Before: CANBY, FERNANDEZ, and M. SMITH, Circuit Judges.

Miguel Garza 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.

* 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).

Garza contends the prosecutor's race-neutral explanation for excusing an African-American juror was in violation of *Batson v. Kentucky*, 476 U.S. 79 (1986).

The California Court of Appeal's determination that there was no *Batson* violation "was not an unreasonable determination of facts in light of the evidence presented in the State court proceeding." *See* 28 U.S.C. § 2254(d)(2). The question is not whether the prosecutor's stated race-neutral reason represents a sound strategic judgment, but "whether counsel's race-neutral explanation for a peremptory challenge should be believed." *Kesser v. Cambra*, 465 F.3d 351, 359 (9th Cir. 2006) (en banc); *see also Cook v. LaMarque*, 593 F.3d 810, 815 (9th Cir. 2010) (to show "purposeful discrimination at *Batson*'s third step" the petitioner must establish that "race was a substantial motivating factor").

We construe appellant's additional arguments as a motion to expand the certificate of appealability. So construed, the motion is denied. *See* 9th Cir. R. 22-1(e); *see also Hiivala v. Wood*, 195 F.3d 1098, 1104-05 (9th Cir. 1999) (per curiam).

AFFIRMED.