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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>ROBERT L. WAHL, Jr.,</p> <p>Petitioner - Appellant,</p> <p>v.</p> <p>BRIAN BELLEQUE,</p> <p>Respondent - Appellee.</p>

No. 09-35353

D.C. No. 3:06-cv-00810-KI

MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Garr M. King, District Judge, Presiding

Submitted December 14, 2010**

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

Oregon state prisoner Robert L. Wahl, Jr. appeals from the district court's order dismissing 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).

Wahl contends that the district court erred in failing to reach the merits of his procedurally defaulted claims because the new reliable evidence of “actual innocence” under *Schlup v. Delo*, 513 U.S. 298, 327 (1995), excuses his default. Wahl bases his claim of actual innocence on the victim’s written affidavit recanting her accusations against him. Wahl has failed to show that, based on this evidence, it is more likely than not that no reasonable juror would have found him guilty beyond a reasonable doubt. *See House v. Bell*, 547 U.S. 518 (2006). Therefore, the district court did not err in declining to reach the merits of the procedurally defaulted claims.

AFFIRMED.