

MAY 18 2012

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

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JAMES LEE EVANS,

Petitioner - Appellant,

v.

TOM FELKER, et al.,

Respondents - Appellees.

No. 09-56012

D.C. No. 5:07-cv-00371-VBF

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Valerie Baker Fairbank, District Judge, Presiding

Submitted May 15, 2012**

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

California state prisoner James Lee Evans appeals from the district court's denial of 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).

Evans contends that his counsel was constitutionally deficient in failing to advise him of the maximum sentence that he faced by entering a plea directly to the court. This claim fails because the state court reasonably determined that Evans was aware of the maximum sentence when he entered his plea; thus, Evans cannot establish prejudice under *Strickland v. Washington*, 466 U.S. 668, 687 (1984). See 28 U.S.C. § 2254(d).

Evans also contends that counsel rendered deficient performance in predicting that he was highly unlikely to receive a sentence of more than 14 years if he entered a plea to the court. This claim fails because Evans has failed to establish that there is no “reasonable argument that counsel satisfied *Strickland*’s deferential standard.” See *Harrington v. Richter*, 131 S. Ct. 770, 788 (2011).

To the extent that Evans argues that his plea was not knowing and voluntary, as required by due process, we decline to expand the certificate of appealability to consider that claim, as Evans has neither followed the procedure required by our rules, see 9th Cir. R. 22-1(e), nor made a substantial showing of the denial of a constitutional right, see 28 U.S.C. § 2253(c)(2).

AFFIRMED.