

MAY 21 2013

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SANTOS LEONARDO ARANGO-
ORTIZ,

Petitioner - Appellant,

v.

MARK NOOTH, Superintendent, Snake
River Correctional Institution,

Respondent - Appellee.

No. 11-35730

D.C. No. 3:10-cv-00966-ST

MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Michael W. Mosman, District Judge, Presiding

Argued and Submitted May 8, 2013
Portland, Oregon

Before: GOODWIN, REINHARDT, and HURWITZ, Circuit Judges.

Santos Leonardo Arango-Ortiz seeks a writ of habeas corpus, alleging that
he received constitutionally ineffective assistance of counsel that rendered his

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

guilty plea involuntary. *Strickland v. Washington*, 466 U.S. 668 (1984); *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). The district court denied the writ. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

The state post-conviction court rejected Arango-Ortiz's claim because he was not a credible witness. Because an adverse credibility finding is dispositive of the *Strickland* claim, Arango-Ortiz may not be granted habeas relief unless he can overcome this finding through an "intrinsic" challenge under 28 U.S.C. § 2254(d)(2) or an "extrinsic" challenge under 28 U.S.C. § 2254(e)(1). *See Taylor v. Maddox*, 366 F.3d 992, 999-1001 (9th Cir. 2004). In his intrinsic challenge, Arango-Ortiz argues that the state court's fact-finding procedure was defective, citing cases in which this court suggested that resolving a credibility contest without hearing live testimony was defective. *Nunes v. Mueller*, 350 F.3d 1045 (9th Cir. 2003); *Hibbler v. Benedetti*, 693 F.3d 1140, 1147-48 (9th Cir. 2012) (citing *Earp v. Ornoski*, 431 F.3d 1158, 1169-70 & n.8 (9th Cir. 2005)). Here, however, Arango-Ortiz was permitted to testify, and it was on the basis of his live testimony that the state court found his allegations not credible. *Sophanthavong v. Palmateer*, 378 F.3d 859, 867 (9th Cir. 2004). Nor can Arango-Ortiz prevail on his extrinsic challenge, as he has failed to present "clear and convincing proof that the

state-court finding is in error.” *Taylor*, 366 F.3d at 1000. Accordingly, he may not be granted habeas relief.

AFFIRMED.