

**NOT FOR PUBLICATION**  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

**FILED**

JUL 16 2009

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

**DALE D. GODOWN,**

Petitioner - Appellee,

v.

**JOHN C. MARSHALL,**

Respondent - Appellant.

No. 07-55517

D.C. No. CV-02-00776-DDP

**MEMORANDUM\***

Appeal from the United States District Court  
for the Central District of California  
Dean D. Pregerson, District Judge, Presiding

Argued and Submitted July 8, 2009  
Pasadena, California

Before: **KOZINSKI**, Chief Judge, **FERNANDEZ** and **N.R. SMITH**, Circuit Judges.

Godown's offense of conviction, second degree burglary, is more serious than passing a rubber check, which the Court in Solem v. Helm described as "one of the most passive felonies a person could commit." 463 U.S. 277, 296 (1983) (internal quotation marks omitted). And Godown's sentence is less severe than

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

that of life without parole in Solem. Id. at 297. Godown's case is closer to Rummel v. Estelle, which upheld a life sentence with possibility for parole for a defendant whose offense of conviction was obtaining \$120.75 by false pretenses. 445 U.S. 263, 266 (1980). The California Court of Appeal's decision that Godown's sentence doesn't violate the Eighth Amendment wasn't contrary to or an unreasonable application of clearly established Supreme Court law. See Lockyer v. Andrade, 538 U.S. 63, 72–74 (2003).

**REVERSED.**