

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

FEB 16 2010

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

ALVIN BENSON MACK,

Petitioner - Appellant,

v.

DEBRA DEXTER,

Respondent - Appellee.

No. 07-56392

D.C. No. CV-06-00356-SJO

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
S. James Otero, District Judge, Presiding

Argued and Submitted February 11, 2010  
Pasadena, California

Before: THOMAS and SILVERMAN, Circuit Judges, and BEISTLINE,\*\* Chief  
District Judge.

Alvin Benson Mack appeals the district court's denial of his 28 U.S.C. §  
2254 habeas petition asserting that his California three strikes sentence of 27 years  
to life for violating Cal. Penal Code § 290 violates the Eighth Amendment. We

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

\*\* The Honorable Ralph R. Beistline, United States District Judge for the  
District of Alaska, sitting by designation.

have jurisdiction pursuant to 28 U.S.C. §§ 1291 and 2253 and reverse and remand with instructions to grant the petition.

We review the district court's denial of the habeas petition de novo. *Gonzalez v. Duncan*, 551 F.3d 875, 879 (9th Cir. 2008). Since the state court denied Mack's claim without explanation, we independently review Mack's claim to determine if the California Supreme Court unreasonably applied clearly established law. *Davis v. Woodford*, 446 F.3d 957, 960 (9th Cir. 2006).

The record in this case establishes that the jury could have found – and likely did find – Mack guilty of merely failing to update his registration on his birthday, which the California courts regard as a mere technical violation of § 290. *People v. Carmony*, 26 Cal. Rptr. 3d 365 (Ct. App. 2005); *People v. Cluff*, 105 Cal. Rptr. 2d 80, 86-88 (Ct. App. 2001). A sentence of 28 years to life for a technical violation of § 290 runs afoul of the Eighth Amendment. *See Gonzalez*, 551 F.3d at 877.

REVERSED AND REMANDED.