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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>NORBERTO G. VIDES,</p> <p>Petitioner - Appellant,</p> <p>v.</p> <p>JAMES D. HARTLEY,</p> <p>Respondent - Appellee.</p>

No. 07-56012

D.C. No. CV-06-06619-JVS

MEMORANDUM*

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

Submitted February 16, 2010**

Before: FERNANDEZ, GOULD, and M. SMITH, Circuit Judges.

California state prisoner Norberto G. Vides appeals pro se from the district court's judgment denying his 28 U.S.C. § 2254 habeas petition challenging the

* 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).

failure by the Board of Prison Terms (“Board”) to set a parole release date. We have jurisdiction pursuant to 28 U.S.C. § 2253, and we affirm.

Vides contends that the Board violated his rights to equal protection and due process when it failed to give him a parole release date. The state court’s decision rejecting Vides’ claims was neither contrary to, nor involved an unreasonable application of, clearly established Supreme Court law. *See* 28 U.S.C. § 2254(d)(1); *see also Estelle v. McGuire*, 502 U.S. 61, 67-68 (1991).

Vides also contends that the Board’s failure to set a parole release date constitutes cruel and unusual punishment in violation of the Eighth Amendment. Vides is not entitled to habeas relief on this claim because Vides failed to demonstrate that his fifteen-years-to-life sentence is grossly disproportionate to his second-degree murder offense. *Lockyer v. Andrade*, 538 U.S. 63, 72 (2003).

AFFIRMED.