

MAR 12 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOHN ALBERT RICHARDSON,

Petitioner - Appellant,

v.

P.L. VASQUEZ, Warden,

Respondent - Appellee.

No. 08-55201

D.C. No. CV-04-01193-RGK

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
R. Gary Klausner, District Judge, Presiding

Argued and Submitted February 11, 2010
Pasadena, California

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

John Albert Richardson appeals the district court's denial of his 28 U.S.C. §
2254 habeas petition asserting that his California three strikes sentence of 28 years

* 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.

to life violates the Eighth Amendment. We 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 de novo and the California Court of Appeal's decision to determine if it is contrary to, or an unreasonable application of clearly established Supreme Court law. *Gonzalez v. Duncan*, 551 F.3d 875, 879 (9th Cir. 2008). We apply clearly established Supreme Court authority existing when the California Court of Appeal issued its decision in 2004. *Lockyer v. Andrade*, 538 U.S. 63, 71-72 (2003). The jury found Richardson guilty of failing to register either a change-of-address or a new second address in violation of Cal. Penal Code § 290(a)(1)(A) or (B). A sentence of 28 years to life for a § 290 violation of this nature is grossly disproportionate to the offense and therefore, runs afoul of the Eighth Amendment. *See Gonzalez*, 551 F.3d at 877.

REVERSED AND REMANDED.