

JUN 14 2010

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JOHN WITHEROW,</p> <p>Petitioner - Appellant,</p> <p>v.</p> <p>CRAIG FARWELL and NEVADA ATTORNEY GENERAL,</p> <p>Respondents - Appellees.</p>
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No. 08-16594

D.C. No. 3:04-CV-00658-HDM

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Howard D. McKibben, District Judge, Presiding

Submitted May 25, 2010**

Before: CANBY, THOMAS, and W. FLETCHER, Circuit Judges.

Nevada state prisoner John Witherow appeals pro se from the district court's judgment denying his 28 U.S.C. § 2254 habeas petition. We have jurisdiction

* 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).

under 28 U.S.C. § 2253,¹ and we affirm.

Witherow contends that the district court erred by determining that he has no federally recognized liberty interest in the application of good time credits to his life sentence. Witherow's due process rights were not violated because the state of Nevada has not created a liberty interest in the application of good time credits to a life sentence. *See Hunt v. Warden*, 903 P.2d 826, 827 (Nev. 1995); *see also Wolff v. McDonnell*, 418 U.S. 539, 557 (1974). Thus, the Nevada Supreme Court's order rejecting this claim was neither contrary to, nor involved an unreasonable application of, clearly established federal law as determined by the Supreme Court of the United States. *See* 28 U.S.C. § 2254(d)(1).

AFFIRMED.

¹ We certify for appeal, on our own motion, the issue of whether the Nevada Department of Corrections' failure to deduct earned good time credits from Witherow's lifetime term of imprisonment violated due process.