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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

KELVIN PATTERSON,

Petitioner - Appellant,

v.

ANTHONY KANE, Warden,

Respondent - Appellee.

No. 07-16544

D.C. No. CV-05-01982-MJJ

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Martin J. Jenkins, District Judge, Presiding

Submitted May 25, 2010**

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

California state prisoner Kelvin Patterson appeals pro se from the district court's judgment denying his 28 U.S.C. § 2254 habeas petition. We have

* 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).

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

Patterson contends that the Board's 2004 decision to deny him parole was not supported by "some evidence" and therefore violated his due process rights. The state court did not unreasonably conclude that some evidence supports the Board's decision. *See* 28 U.S.C. § 2254(d); *see also Hayward v. Marshall*, No. 06-55392, 2010 WL 1664977, at *11, *17 (9th Cir. Apr. 22, 2010).

AFFIRMED.

¹ We certify for appeal, on our own motion, the issue of whether the 2004 decision of the California Board of Prison Terms ("the Board") to deny parole violated due process.