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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>RANDALL COWANS,</p> <p>Petitioner - Appellee,</p> <p>v.</p> <p>JOHN MARSHALL, Warden,</p> <p>Respondent - Appellant.</p>

No. 09-56880

D.C. No. 2:05-cv-06276-RSWL-OP

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Ronald S.W. Lew, Senior District Judge, Presiding

Argued and Submitted July 16, 2010
Pasadena, California

Before: FARRIS and SILVERMAN, Circuit Judges, and ROBART, District Judge.**

Respondent-Appellant John Marshall (“the Warden”) appeals the district court’s order granting Petitioner-Appellee Randall Cowans immediate release from

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

** The Honorable James L. Robart, United States District Judge for the Western District of Washington, sitting by designation.

prison without serving a period of parole.¹ We have jurisdiction pursuant to 28 U.S.C. § 2253 and we affirm.

The district court did not abuse its discretion when it ordered Cowans's immediate release without serving a period of parole. "Federal courts have the latitude to resolve a habeas petition 'as law and justice require.'" *Pirtle v. Cal. Bd. of Prison Terms*, — F.3d —, 2010 WL 2732888, at *8 (9th Cir. July 12, 2010) (quoting 28 U.S.C. § 2243). "Ordering the release of a prisoner is well within the range of remedies available to federal habeas courts. 'Habeas lies to enforce the right of personal liberty; when that right is denied and a person confined, the federal court has the power to release him.'" *Id.* (quoting *Fay v. Noia*, 372 U.S. 391, 430-31 (1963), *overruled on other grounds by Wainwright v. Sykes*, 433 U.S. 72 (1977)). Moreover, we have approved the practice of crediting unlawful time spent in custody against a prisoner's period of parole supervision. *See McQuillion v. Duncan*, 342 F.3d 1012, 1015 (9th Cir. 2003). Here, the district court granted Cowans's habeas petition because Cowans had been unlawfully denied parole in 2001 and 2003. The California Board of Prison Terms failed to comply with district court's order to hold a hearing within 30 days of judgment to set Cowans's

¹The Warden does not appeal the district court's grant of Cowans's petition for a writ of habeas corpus.

release date. The district court acted well within its discretion when it then ordered Cowans's immediate release.

AFFIRMED.