

AUG 02 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARIO RENE RUBIO,

Petitioner - Appellant,

v.

C. M. HARRISON,

Respondent - Appellee.

No. 08-55467

D.C. No. 2:05-cv-08691-ODW

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
Otis D. Wright II, District Judge, Presiding

Submitted July 19, 2010\*\*

Before: B. FLETCHER, REINHARDT, and WARDLAW, Circuit Judges.

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

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\* 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,<sup>1</sup> and we reverse and remand.

Rubio contends that the prison disciplinary decision, finding him guilty of indecent exposure with a prior court conviction under California Penal Code sections 314 or 288, was not supported by “some evidence” and therefore violated his due process rights. We remand for the district court to determine whether any of Rubio’s prior court convictions qualify as convictions under California Penal Code sections 314 or 288, and if so, whether some evidence supports the hearing officer’s finding. *See Superintendent v. Hill*, 472 U.S. 445, 454 (1985).

**REVERSED AND REMANDED.**

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<sup>1</sup> We certify for appeal, on our own motion, the issue of whether the 2003 prison disciplinary decision assessing 150 days loss of good time work credits and 90 days loss of privileges violated due process.

FILED

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Judge Reinhardt dissents.