

SEP 01 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARKEE DION CARTER,

Petitioner - Appellant,

v.

ROBERT AYERS, Warden,

Respondent - Appellee.

No. 08-17161

D.C. No. 3:06-cv-07398-SI

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Susan Illston, District Judge, Presiding

Submitted August 10, 2010**

Before: LEAVY, HAWKINS, and IKUTA, Circuit Judges.

California state prisoner Markee Dion Carter appeals pro se from the district court's judgment denying his 28 U.S.C. § 2254 petition challenging the forfeiture

* 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).

of behavioral time credits. We have jurisdiction under 28 U.S.C. § 2253¹, and we affirm.

To the extent Carter contends there was no evidence to support the disciplinary decision finding him guilty of conspiracy to traffic and distribute a controlled substance, the record reflects there was “some evidence” supporting the disciplinary decision. Accordingly, the state court’s rejection of this claim was neither contrary to, nor an unreasonable application of, *Superintendent v. Hill*, 472 U.S. 445, 455 (1985), nor based on unreasonable determination of the facts in light of the evidence presented. *See* 28 U.S.C. § 2254(d).

AFFIRMED.

¹ We certify for appeal, on our own motion, the issue of whether Carter’s due process rights were violated because the disciplinary decision was not supported by “some evidence.”