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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>BYRON HIBBERT,</p> <p>Petitioner - Appellant,</p> <p>v.</p> <p>BEN CURRY,</p> <p>Respondent - Appellee.</p>
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No. 07-17044

D.C. No. CV-06-03294-WHA

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
William H. Alsup, District Judge, Presiding

Submitted September 13, 2010**

Before: SILVERMAN, CALLAHAN, and N.R. SMITH, Circuit Judges.

California state prisoner Byron Hibbert 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.

Hibbert 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*, 603 F.3d 546, 563 (9th Cir. 2010) (en banc).

Hibbert's request for judicial notice is granted.

AFFIRMED.

¹We certify for appeal, on our own motion, the issue of whether the 2005 decision of the California Board of Prison Terms ("the Board") to deny parole violated due process. We deny a certificate of appealability as to Hibbert's claim that the district court improperly denied his motion under Rule 60(b) of the Federal Rules of Civil Procedure.