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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

TYREE COUTEE,

Petitioner - Appellee,

v.

JAMES WALKER, Warden,

Respondent - Appellant.

No. 10-55138

D.C. No. 5:08-cv-00692-CAS-RZ

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Christina A. Snyder, District Judge, Presiding

Argued and Submitted November 10, 2011
Pasadena, California

Before: SCHROEDER and REINHARDT, Circuit Judges, and HUDSON, District
Judge.**

Warden J. Walker appeals the district court's grant of Tyree Coutee's petition for a writ of habeas corpus. Coutee argued that there was insufficient evidence to

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

** The Honorable Henry E. Hudson, District Judge for the U.S. District Court for Eastern Virginia, sitting by designation.

support the true finding on a gang enhancement related to his 2006 conviction. The district court issued its opinion prior to the California Supreme Court decision in *People v. Albillar*, 244 P.3d 1062 (Cal. 2010), which modified the interpretation of Cal. Penal Code §186.22(b)(1) previously applied by this court. We hold that the district court, in reliance on these prior opinions, erred in finding that there was insufficient evidence to uphold the enhancement. We hold that the determination by the California Court of Appeal that there was sufficient evidence supporting the enhancement as defined by the California courts was not an objectively unreasonable application of the requirements of *Jackson v. Virginia*, 443 U.S. 307 (1979).

REVERSED and REMANDED.