

SEP 29 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>KEITH WAGONER,</p> <p>Petitioner - Appellant,</p> <p>v.</p> <p>TOM L. CAREY, Warden,</p> <p>Respondent - Appellee.</p>

No. 07-55899

D.C. No. CV-05-06142-GHK

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
George H. King, District Judge, Presiding

Submitted September 13, 2010**

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

California state prisoner Keith Wagoner 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.

Wagoner contends that the Board of Parole Hearings' 2004 decision to deny him parole violated his due process rights. In light of Wagoner's recent serious disciplinary infraction, 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).

Wagoner's requests for oral argument and judicial notice are denied.

AFFIRMED.

¹ We certify for appeal, on our own motion, the issue of whether some evidence of current dangerousness supported the California Board of Parole Hearings' 2004 decision to deny parole. *See Hayward v. Marshall*, 603 F.3d 546, 554-55 (9th Cir. 2010) (en banc). We decline to certify for appeal Wagoner's remaining contentions. *See* 28 U.S.C. § 2253(c)(2) (certificate of appealability requires "substantial showing of the denial of a constitutional right").