

JAN 19 2011

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

HARRY W. BARTON,

Petitioner - Appellant,

v.

ROBERT AYERS, Warden,

Respondent - Appellee.

No. 07-15939

D.C. No. CV-06-03646-SI

MEMORANDUM*

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

Submitted January 10, 2011**

Before: BEEZER, TALLMAN, and CALLAHAN, Circuit Judges

* 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).

California state prisoner Harry W. Barton appeals pro se from the district court's judgment denying his 28 U.S.C. § 2254 habeas petition. We have jurisdiction under 28 U.S.C. § 2253¹, and we affirm.

Barton contends that the Board of Parole Hearings's 2005 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, 562-63 (9th Cir. 2010).

AFFIRMED.

¹ We certify for appeal, on our own motion, the issue of whether the 2005 decision of the California Board of Parole Hearings to deny parole violated due process. We decline to issue a certificate of appealability as to Barton's remaining claims.