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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

EDWARD G. ONTIVEROS,

Petitioner - Appellant,

v.

R. J. SUBIA; ATTORNEY GENERAL
OF THE STATE OF CALIFORNIA;
EDMUND G. BROWN, Jr.,

Respondents - Appellees.

No. 09-15660

D.C. No. 2:07-cv-02456-GEB

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Garland E. Burrell, District Judge, Presiding

Submitted November 16, 2010**

Before: TASHIMA, BERZON, and CLIFTON, Circuit Judges.

California state prisoner Edward G. Ontiveros appeals pro se from the district court's judgment dismissing his 28 U.S.C. § 2254 habeas petition. We

* 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).

have jurisdiction under 28 U.S.C. § 2253¹, and we affirm.

The district court did not err in dismissing Ontiveros' habeas petition for lack of jurisdiction. The district court correctly concluded that Ontiveros could not proceed under § 2254 because he received only a "counseling chrono" and did not lose any sentencing credit as a result of the disciplinary decision. *See Ramirez v. Galaza*, 334 F.3d 850, 859 (9th Cir. 2003) (stating that "habeas jurisdiction is absent, and a § 1983 action proper, where a successful challenge to a prison condition will not necessarily shorten the prisoner's sentence.")

Ontiveros' Rule 60(b) motion, filed on October 7, 2010, is construed in part as a renewed motion for appointment of counsel, and in part as a request for judicial notice. The request for judicial notice is granted. The requests for oral argument and appointment of counsel are denied.

AFFIRMED.

¹ We certify for appeal, on our own motion, the issue of whether the district court properly dismissed Ontiveros' petition for lack of jurisdiction.