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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DENNIS GARBUTT

Petitioner,

No. CIV S-05-2130 GEB KJM P

vs.

THOMAS L. CAREY, et al.

Respondents.

ORDER

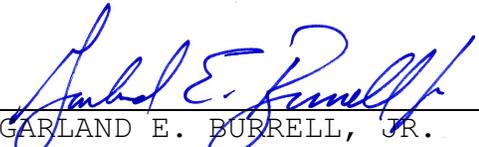
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On May 17, 2010, the U.S. Court of Appeals for the Ninth Circuit remanded this case for the district court to determine whether it should issue a certificate of appealability under 28 U.S.C. § 2253(c). Having reviewed the record and relevant case law, the court finds that petitioner has made a substantial showing that his constitutional right to due process may have been denied by the Board of Prison Terms’ finding of “some evidence of current dangerousness” in the circumstances of the commitment offense and its finding that petitioner has “minimized” his involvement in and culpability for the crime. The court makes this determination in light of the ruling in Cooke v. Solis, 606 F.3d 1206 (9th Cir. 2010) and its apparent incorporation of In re Lawrence, 44 Cal. 4th 1181 (2008), as defining “the scope of the federally enforceable liberty interest created by California’s ‘some evidence’ requirement[.]” Cooke, 606 F.3d at 1214.

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Accordingly, IT IS HEREBY ORDERED that a certificate of appealability is GRANTED on the issue of whether the Board of Prison Terms denied petitioner due process in finding "some evidence of current dangerousness."

Dated: August 25, 2010



GARLAND E. BURRELL, JR.
United States District Judge