

JUN 18 2010

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JAMES M. HARRISON,

Petitioner - Appellant,

v.

DOUGLAS GILLESPIE,

Respondent - Appellee.

No. 08-16602

D.C. No. 2:08-cv-00802-RCJ-RJJ

ORDER

KOZINSKI, Chief Judge:

Upon the vote of a majority of nonrecused active judges, it is ordered that this case be reheard en banc pursuant to Circuit Rule 35-3. The three-judge panel opinion shall not be cited as precedent by or to any court of the Ninth Circuit.

Judges Rawlinson and Bybee did not participate in the deliberations or vote in this case.