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

GREGORY SANDERS,

No. C-07-6007 TEH (PR)

Petitioner,

v.

ORDER DENYING PETITION FOR WRIT  
OF HABEAS CORPUS

ROBERT AYERS, Warden

Respondent.

\_\_\_\_\_/

Petitioner Gregory Sanders, a state prisoner incarcerated at San Quentin State Prison, seeks a writ of habeas corpus under 28 U.S.C. section 2254 challenging the California Board of Parole Hearings' ("BPH") September 21, 2006 decision to deny him parole, which, for the reasons that follow, the Court denies.

I

At the time of the offense, Petitioner was separated from his estranged wife, who, along with her boyfriend, were staying with her mother at her mother's mobile home in San Bernardino County. Doc. #5-6 at 2. Petitioner also was staying at the mobile home with

1 his four year old son. Id; Doc. #5-5 at 17.

2 On February 1, 1988, Petitioner and his son left the  
3 mobile home. Doc. #5 at 2; Doc. #5-5 at 17, 57; Doc. #5-6 at 2.  
4 Prior to their return, Petitioner noticed a "great big huge  
5 handprint" on his son's arm. Doc. #5-5 at 18. When Petitioner  
6 asked his son what had happened, he explained that his mother's  
7 boyfriend "had hurt him." Id; see also id. at 79.

8 Petitioner became angry and when he returned to the mobile  
9 home, he went directly to the bedroom shared by his estranged wife  
10 and her boyfriend and shot both of them. Doc. #5-5 at 79; Doc. #5-6  
11 at 2. When the mother of Petitioner's estranged wife heard the  
12 gunshots, she went to the bedroom and witnessed Petitioner shoot the  
13 boyfriend a second time and then shoot her daughter. Petitioner  
14 fled the scene and was arrested later by the San Bernardino County  
15 Sheriff's helicopter crew. The boyfriend died at the scene;  
16 Petitioner's estranged wife survived. Doc. #5-6 at 2.

17 On November 9, 1988, Petitioner was sentenced to 16 years  
18 to life in state prison following his guilty plea to second degree  
19 murder with a special allegation that he was armed with a deadly  
20 weapon during the commission of the murder. Doc. #5-2 at 2-4. His  
21 minimum eligible parole date was October 1, 1998. Doc. #5-5 at 4.

22 On September 21, 2006, Petitioner appeared before BPH for  
23 his sixth parole suitability hearing. Doc. #5-5 at 2. At that  
24 hearing, BPH found Petitioner "was not yet suitable for parole and  
25 . . . would pose an unreasonable risk of danger to society or a  
26 threat to public safety if released from prison." Id. at 76. BPH  
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1 Lambert, 370 F.3d 1002, 1009-10 (9th Cir. 2004). Under AEDPA, this  
2 Court may entertain a petition for habeas relief on behalf of a  
3 California state inmate "only on the ground that he is in custody in  
4 violation of the Constitution or laws or treaties of the United  
5 States." 28 U.S.C. § 2254(a).

6 The writ may not be granted unless the state court's  
7 adjudication of any claim on the merits: "(1) resulted in a  
8 decision that was contrary to, or involved an unreasonable  
9 application of, clearly established Federal law, as determined by  
10 the Supreme Court of the United States; or (2) resulted in a  
11 decision that was based on an unreasonable determination of the  
12 facts in light of the evidence presented in the State court  
13 proceeding." 28 U.S.C. § 2254(d). Under this deferential standard,  
14 federal habeas relief will not be granted "simply because [this]  
15 court concludes in its independent judgment that the relevant  
16 state-court decision applied clearly established federal law  
17 erroneously or incorrectly. Rather, that application must also be  
18 unreasonable." Williams v. Taylor, 529 U.S. 362, 411 (2000).

19 While circuit law may provide persuasive authority in  
20 determining whether the state court made an unreasonable application  
21 of Supreme Court precedent, the only definitive source of clearly  
22 established federal law under 28 U.S.C. section 2254(d) rests in the  
23 holdings (as opposed to the dicta) of the Supreme Court as of the  
24 time of the state court decision. Williams, 529 U.S. at 412; Clark  
25 v. Murphy, 331 F.3d 1062, 1069 (9th Cir. 2003).

1 III

2 Petitioner seeks federal habeas corpus relief from BPH's  
3 September 21, 2006 decision finding him unsuitable for parole and  
4 denying him a subsequent hearing for two years on the ground that  
5 the decision does not comport with due process.

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7 A

8 Under California law, prisoners like Petitioner who are  
9 serving indeterminate life sentences for noncapital murders, i.e.,  
10 those murders not punishable by death or life without the  
11 possibility of parole, become eligible for parole after serving  
12 minimum terms of confinement required by statute. In re Dannenberg,  
13 34 Cal. 4th 1061, 1077-78 (2005). At that point, California's  
14 parole scheme provides that BPH "shall set a release date unless it  
15 determines that the gravity of the current convicted offense or  
16 offenses, or the timing and gravity of current or past convicted  
17 offense or offenses, is such that consideration of the public safety  
18 requires a more lengthy period of incarceration." Cal. Penal Code §  
19 3041(b). Regardless of the length of the time served, "a life  
20 prisoner shall be found unsuitable for and denied parole if in the  
21 judgment of the panel the prisoner will pose an unreasonable risk of  
22 danger to society if released from prison." Cal. Code Regs. tit.  
23 15, § 2402(a). In making this determination, BPH must consider  
24 various factors, including the prisoner's social history, past  
25 criminal history, and base and other commitment offense, including  
26 behavior before, during and after the crime. See Id. § 2402(b)-(d).

1 California's parole scheme "gives rise to a cognizable  
2 liberty interest in release on parole" that cannot be denied without  
3 adequate procedural due process protections." Sass v. California  
4 Bd. of Prison Terms, 461 F.3d 1123, 1128 (9th Cir. 2006); McQuillion  
5 v. Duncan, 306 F.3d 895, 902 (9th Cir. 2002). It matters not that a  
6 parole release date has not been set for the inmate because "[t]he  
7 liberty interest is created, not upon the grant of a parole date,  
8 but upon the incarceration of the inmate." Biggs v. Terhune, 334,  
9 F.3d 910, 915 (9th Cir. 2003).

10 Petitioner's due process rights require that "some  
11 evidence" support BPH's decision finding him unsuitable for parole.  
12 Sass, 461 F.3d at 1125. This "some evidence" standard is  
13 deferential, but ensures that "the record is not so devoid of  
14 evidence that the findings of [the board] were without support or  
15 otherwise arbitrary." Superintendent v. Hill, 472 U.S. 445, 457  
16 (1985). Determining whether this requirement is satisfied "does not  
17 require examination of the entire record, independent assessment of  
18 the credibility of witnesses, or weighing of the evidence." Id. at  
19 455. Rather, "the relevant question is whether there is any  
20 evidence in the record that could support the conclusion reached by  
21 the disciplinary board." Id. at 455-56.

22 Due process also requires that the evidence underlying  
23 BPH's decision have some indicium of reliability. Biggs, 334 F.3d  
24 at 915; McQuillion, 306 F.3d at 904. Relevant to this inquiry is  
25 whether the prisoner was afforded an opportunity to appear before,  
26 and present evidence to, BPH. See Pedro v. Oregon Parole Bd., 825  
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1 F.2d 1396, 1399 (9th Cir. 1987). If BPH's determination of parole  
2 unsuitability is to satisfy due process, there must be some reliable  
3 evidence to support the decision. Rosas v. Nielsen, 428 F.3d 1229,  
4 1232 (9th Cir. 2005).

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6 B

7 Petitioner claims that BPH's finding that he was  
8 unsuitable for parole violated his due process rights because: (1)  
9 BPH's decision was not supported by some evidence, see Doc. #1 at 1-  
10 8 (Contention I), 13-20 (Contention III) & 21-23 (Contention IV);  
11 (2) BPH considered impermissible evidence in its decision; and (3)  
12 BPH's continuous denials of parole violate the terms of Petitioner's  
13 plea agreement. Each of Petitioner's claims is analyzed below.

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16 Petitioner claims BPH's finding that he was unsuitable for  
17 parole violated his due process rights because the decision was not  
18 supported by some evidence. Specifically, in Contention I,  
19 Petitioner claims BPH's finding that he was unsuitable for parole  
20 violated his due process rights because "there is no . . . evidence  
21 to support the board's decision that Petitioner currently poses an  
22 unreasonable threat to public safety if released from prison." Doc.  
23 #1 at 1, emphasis in original; see *id.* at 1-8. In Contention III,  
24 Petitioner disputes the sufficiency of the evidence finding him  
25 unsuitable, rather than suitable, for parole, going through each of  
26 the specific factors set forth in California Code of Regulations,  
27

1 Title 15, § 2402(b)-(d). Doc. #1 at 13-20. And in Contention IV,  
2 Petitioner claims the decision to deny him parole was not based on  
3 sufficient evidence, but rather was the result of a biased decision  
4 maker who predetermined his fate. Doc. #1 at 21-23.

5 As an initial matter, the Court notes that the record  
6 shows BPH afforded Petitioner and his counsel an opportunity to  
7 speak and present Petitioner's case at the hearing, gave them time  
8 to review documents relevant to Petitioner's case and provided them  
9 with a reasoned decision in denying parole. Doc #5-5 at 8-11, 14 &  
10 76-89.

11 The record also shows that BPH relied on several  
12 circumstances tending to show unsuitability for parole and that  
13 these circumstances formed the basis for its conclusion that  
14 Petitioner posed "an unreasonable risk of danger to society or a  
15 threat to public safety if released from prison." Doc #5-5 at 76;  
16 see Cal. Code Regs. tit. 15, § 2402(a) (stating that a prisoner  
17 determined to be an unreasonable risk to society shall be denied  
18 parole).

19 First, BPH told Petitioner that he had "one of the more  
20 unrealistic set of parole plans," which referred to Petitioner's  
21 plan "to retire and go fishing and live off the generosity of [his]  
22 children for the rest of [his] life." Doc. #5-5 at 76-77; see also  
23 id. at 42-45, 58-60 & 84. During the hearing, when asked if he  
24 "perchance considered working" Petitioner responded, "[o]nly as a  
25 hobby." Id. at 45.

26 Second, BPH examined the commitment offense and found that  
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1 the offense:

2 . . . was carried out in a specially cruel and  
3 callous manner. . . . Multiple victims were  
4 attacked. These were people that semi-trusted  
5 you, an estranged wife, her boyfriend, you'd  
6 been invited into the home. The offense was  
7 carried out in an execution style murder. You  
8 had a loaded gun. You walked into a room with  
9 the intent of killing somebody. You almost hit  
10 or injured a third person, a lady who cared for  
11 you, the mother. The offense was carried out in  
12 a manner which demonstrate[s] exceptionally  
13 callous disregard for human suffering and your  
14 motive for the crime was trivial, very, very  
15 trivial.

16 Doc. #5-5 at 77-78; see also id. at 86-87; see Cal Code Regs tit 15,  
17 § 2402(c)(1)(D) (listing "exceptionally callous disregard for human  
18 suffering" as factor tending to show unsuitability for parole).

19 Third, BPH noted that Petitioner had been in prison for 18  
20 years and had "not yet developed a vocation." Doc. #5-5 at 80.

21 Fourth and somewhat related, BPH expressed concern over Petitioner's  
22 "lack of specifically designed self-help programs for dealing with  
23 [his] issues with women," an apparent reference to Petitioner's  
24 domestic violence history. Id. at 81; see also id. at 87 & 52 (BPH  
25 noted that Petitioner "seem[s] to find [his] way to very hostile and  
26 aggressive and potentially murderous relationships with women[]" and  
27 "[found] it more than a coincidence that [Petitioner has been]  
28 married to three different women and all three of them . . . made  
some attempt at injuring . . . or killing [him]").

29 Fifth, BPH cited the psychological evaluation prepared in  
30 anticipation of Petitioner's parole suitability hearing, which noted  
31 Petitioner

1 . . . would present a low risk of future  
2 violence . . . if he were able to have his  
3 psychological needs met. In an environment  
4 where he would have checks on his tendency to  
5 form intense volatile relationships he would be  
6 expected to do so well. His maladaptive  
7 personality traits contribute to his repeated  
8 selection of partners who are emotionally  
9 unstable, untrustworthy or exploitive. Until  
10 [Petitioner] understands himself better he is at  
11 risk of becoming involved with persons who will  
12 evoke maladaptive behaviors and/or emotional  
13 instability.

14 Doc. #5-5 at 83, emphasis added.

15 BPH also considered other factors tending to support  
16 suitability for parole including: (1) Petitioner's lack of  
17 significant history of violent crime; (2) that Petitioner received  
18 at least 24 educational units through Patten University; (3) that  
19 Petitioner was a member of Vietnam Veterans of America; (4) that he  
20 had been working through the Prison Industry Authority, currently as  
21 a sergeant's clerk at the infirmary; and (5) that Petitioner had  
22 received no Rules Violation Reports under California Department of  
23 Corrections and Rehabilitation ("CDCR") Form 115(A), and received  
24 only one Custodial Counseling Chrono pursuant to CDCR Form 128-A in  
25 March 1991. See Cal. Code Regs. tit. 15, § 3312(a)(2)-(3). Doc.  
26 #5-5 at 79-80 & 86.

27 At the conclusion of the hearing, BPH cited specific areas  
28 in which Petitioner could improve:

29 . . . And one [area] is a vocation. You need to  
30 develop something that will support yourself.  
31 You need to be able to do that. You know,  
32 you're 54 going on 55 and you're not going to  
33 get Social Security till you're 62 . . . Don't  
34 put all your eggs in one basket. You need to  
35 work on some insight issues. Also, . . . you're  
36 a little bit flip. You're affect is off and

1 . . . you're defensive and avoidant in some  
2 arenas. . . . We talked about you need to deal  
3 with issues of volatile relationships and  
4 improve your parole plans, develop a vocation  
and do some more self-help, book reports for  
example, with regards to your relationships with  
women.

5 Doc. #5-5 at 88.

6 The state superior court affirmed the decision of BPH to  
7 deny Petitioner parole, finding that it was supported by "more than  
8 'some evidence.'" Doc #5-7 at 5. Indeed, in addressing this claim,  
9 the superior court stated:

10 The board found that the Petitioner was not yet  
11 ready for parole as he would pose an  
unreasonable risk to society. The board found  
12 that the Petitioner's parole plans were  
unrealistic in that he intended to retire and go  
13 fishing and live off his children. The board  
recommended that he develop some realistic  
14 parole plans and demonstrate that he would be  
able to support himself. The board further  
15 found that the offense was carried out in a  
cruel and callous manner and in this the court  
16 agrees. The court further agrees with the board  
in its classification of the killing as being an  
17 execution style murder.

18 The board viewed the Petitioner's prison conduct  
and commended him for not receiving any CDC  
115's and having received only one CDC 128 in  
19 March of 1991. The board was concerned that the  
Petitioner had been in prison for 18 years and  
20 had not developed any type of vocation. The  
board recommended that the Petitioner develop  
21 some skills. The board considered the  
psychological report . . . dated in March of  
22 2006 and commented on the Petitioner's poor  
performance on his GAF [Global Assessment  
23 Functioning] test.

24 [It] was obvious from a reading from the  
proceedings in the board's decision that the  
25 Petitioner did not make a good impression with  
the board and that the board considered his  
26 attitude to be somewhat flippant.

1           This court finds that there was more than "some  
2           evidence" to justify the finding of  
3           unsuitability of Petitioner for parole and a two  
4           year denial on that finding.

5           Doc. #5-7 at 4-5. The state appellate court summarily denied  
6           Petitioner's request for habeas corpus relief, Doc. #5-9 at 37, and  
7           the state supreme court summarily denied his Petition for Review.  
8           Doc. #5-9 at 2.

9           On this record, the court finds that the state courts'  
10          rejection of Petitioner's due process claim that BPH's decision was  
11          not supported by "some evidence" was not contrary to, nor did it  
12          involve an unreasonable application of, clearly established federal  
13          law, and it was not based on an unreasonable determination of the  
14          facts. See 28 U.S.C. § 2254(d); Williams, 529 U.S. at 409.

15          The record shows that BPH had some reliable evidence to  
16          support its finding of unsuitability. BPH observed that Petitioner  
17          had unrealistic parole plans, failed to develop a vocation, failed  
18          to participate sufficiently in self-help programs addressing his  
19          domestic violence issues, and did not receive a psychological  
20          evaluation supportive of his parole. Based on these failures,  
21          especially when viewed in conjunction with the nature of the  
22          commitment offense, this Court cannot say that BPH's finding that  
23          Petitioner was unsuitable for parole was "without support or  
24          otherwise arbitrary." See Hill, 472 U.S. at 457. On this record,  
25          BPH reasonably concluded that Petitioner was not yet suitable for  
26          parole. See, e.g., Rosas, 428 F.3d at 1232-33 (upholding denial of  
27          parole based on gravity of offense and the petitioner's psychiatric  
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1 reports documenting his failure to complete programming while in  
2 prison); Biggs, 334 F.3d at 916 (upholding denial of parole based on  
3 gravity of offense and the petitioner's conduct prior to  
4 imprisonment); Morales v. California Dep't. of Corrections, 16 F.3d  
5 1001, 1005 (9th Cir. 1994), rev'd on other grounds, 514 U.S. 499  
6 (1995) (upholding denial of parole based on the cruel nature of  
7 offense, the petitioner's unstable and criminal history, and his  
8 need for further psychiatric treatment). It is not up to this  
9 Court, as Petitioner urges in Contention III, see Doc. #1 at 13-20,  
10 to "reweigh the evidence." Powell v. Gomez, 33 F.3d 39, 42 (9th  
11 Cir. 1994).

12           Petitioner in Contention IV attacks BPH's decision finding  
13 him unsuitable for parole on the ground the decision was not based  
14 on sufficient evidence, but rather was the result of a biased  
15 decision maker who predetermined his fate. Doc. #1 at 21-23. In  
16 support of this claim, Petitioner cites a comment made by one of the  
17 BPH panel members, claiming she "chose to make the parole  
18 consideration hearing personal, . . . when she stated: 'Also, you  
19 know, your presentation today kind of got under my skin a little  
20 bit. Your [sic] a little bit flip.'" Id. at 21. Petitioner claims  
21 this panel member "took it so personal, she even made an  
22 unprofessional opinion when stating that Petitioner was a little bit  
23 flip." Id. According to Petitioner, the result of his parole  
24 suitability hearing "was predetermined as a result of [the panel  
25 member's] admittance that she felt effected [sic] by Petitioner and  
26 Petitioner's parole plans to possibly stay with and mooch from his  
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1 children until he got on his feet." Id. at 23.

2 Due process requires that a parole board charged with  
3 determining whether or not a particular prisoner is suitable for  
4 parole be "neutral and detached." Morrissey v. Brewer, 408 U.S.  
5 471, 488-89; see also O'Bremski v. Maass, 915 F.2d 418, 422 (9th  
6 Cir. 1990) (to satisfy due process, a prisoner "is entitled to have  
7 his release date considered by a parole board that [is] free from  
8 bias or prejudice").

9 Here, although the panel member's observation was an  
10 honest, albeit perhaps a less than artful one, the Court disagrees  
11 with Petitioner's claim that it demonstrates bias. Assuming for the  
12 sake of argument, however, that the comment did demonstrate bias,  
13 there is no evidence in the record indicating that this alleged bias  
14 affected BPH's decision or served as the basis for finding  
15 Petitioner unsuitable for parole. On the contrary, the transcript  
16 from Petitioner's September 21, 2006 parole hearing demonstrates  
17 that he received an individualized assessment of his potential  
18 parole suitability. Doc #5-5 at 76-89. Further, as demonstrated  
19 above, there was ample reliable evidence to support BPH's decision  
20 to deny petitioner parole.

21 Under these circumstances, the state courts' rejections of  
22 Petitioner's claim cannot be said to have been objectively  
23 unreasonable. See 28 U.S.C. § 2254(d); Williams, 529 U.S. at 409.

26 Petitioner next claims that BPH considered impermissible  
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1 evidence at his parole suitability hearing in violation of his right  
2 to due process. According to Petitioner, it was improper for BPH to  
3 find that the commitment offense was "especially cruel," because  
4 that is an element of first degree murder, and he "was not convicted  
5 of having committed the commitment offense in a[n] 'especially  
6 cruel' manner." Doc. #1 at 9. Relying on Cunningham v. California,  
7 549 U.S. 270 (2007), Petitioner claims that his minimum term of  
8 imprisonment was 16 years, and that "[i]n order for Petitioner's  
9 term to be set at life without the possibility of parole, the  
10 elements used to determine that finding must be found true by a  
11 jury." *Id.* at 11; see *id.* at 9-13.

12 In Cunningham, the United States Supreme Court held that  
13 California's Determinate Sentencing Law, which authorized a judge,  
14 rather than a jury, to find facts that exposed a defendant to an  
15 elevated upper term sentence, violated a defendant's Sixth Amendment  
16 right to a trial by jury. Cunningham, 549 U.S. at 293. Cunningham  
17 is the progeny of an earlier Supreme Court case, Apprendi v. New  
18 Jersey, 530 U.S. 466 (2000). In Apprendi, the Supreme Court held  
19 that "[o]ther than the fact of a prior conviction, any fact that  
20 increases the penalty for a crime beyond the prescribed statutory  
21 maximum must be submitted to a jury, and proved beyond a reasonable  
22 doubt." *Id.* at 490. The "statutory maximum" discussed in Apprendi  
23 is the maximum sentence a judge could impose based solely on the  
24 facts reflected in the jury verdict or admitted by the defendant; in  
25 other words, the relevant "statutory maximum" is not the sentence  
26 the judge could impose after finding additional facts, but rather  
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1 the maximum he could impose without any additional findings.

2 Blakely v. Washington, 542 U.S. 296, 303-04 (2004).

3           Cunningham involved a violation of a defendant's Sixth  
4 Amendment right to a trial by jury with respect to sentencing under  
5 the Determinate Sentencing Law, and did not address a petitioner's  
6 rights at a parole suitability hearing, which is what Petitioner is  
7 challenging. Petitioner was not sentenced under California's  
8 Determinate Sentencing Law; rather, he was sentenced to an  
9 indeterminate life sentence following his guilty plea to second  
10 degree murder with a special allegation that he was armed with a  
11 deadly weapon during the commission of the murder. Doc. #5-2 at 2-  
12 4. Given the inapplicability of Cunningham to Petitioner's  
13 situation, the state courts' rejections of Petitioner's claim cannot  
14 be said to have been objectively unreasonable. See 28 U.S.C. §  
15 2254(d); Williams, 529 U.S. at 409.

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18           Petitioner's final claim is that his continued  
19 incarceration violates the terms of his plea agreement in that he is  
20 being deprived of enforcement of the October 1, 1998 minimum  
21 eligible parole date he bargained for when he entered a guilty plea  
22 to the charged offense. Doc. #1 at 23-28. In addressing this  
23 claim, the state superior court wrote: "[a] review of the [plea]  
24 agreement reveals that there was no specific term agreeing to the  
25 consideration of a finding of suitability for parole at any  
26 particular time in the future." Doc. #5-7 at 3.

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1            "[W]hen a plea rests in any significant degree on a  
2 promise or agreement of the prosecutor, so that it can be said to be  
3 a part of the inducement or consideration, such promise must be  
4 fulfilled." Santobello v. New York, 404 U.S. 257, 262 (1971). A  
5 plea agreement containing a specific promise, such as when the  
6 defendant will be paroled, is enforceable. See Brown v. Poole, 337  
7 F.3d 1155, 1161 (9th Cir. 2003) (that state prosecutor had no right  
8 to offer deal defendant accepted in exchange for waiving her  
9 constitutional rights may be a problem for state, but not  
10 defendant). But it is Petitioner who bears the burden of proving  
11 any alleged promise made by the prosecution. See Santobello, 404  
12 U.S. at 261-62. Petitioner makes no such showing.

13            Rather, the record shows that although Petitioner's  
14 minimum sentence was 16 years, he potentially could serve the  
15 maximum of life in prison. Doc. #5-2 at 2-4. Nothing in the record  
16 indicates that Petitioner is entitled to release at any time prior  
17 to a finding by BPH that he is suitable for parole. Petitioner's  
18 observation that "[a]t the time [he] agreed to waive his rights [and  
19 plead guilty], the finding of suitability for parole was not as  
20 stringent as it is today," Doc. #1 at 28, is of no import. Cf.  
21 Evenstad v. United States, 978 F.2d 1154, 1158-5 (9th Cir. 1992)  
22 (change in the law regarding parole eligibility does not render an  
23 earlier guilty plea involuntary).

24            Under these circumstances, the state courts' rejection of  
25 Petitioner's breach of plea agreement claim cannot be said to be  
26 objectively unreasonable. See 28 U.S.C. § 2254(d); Williams, 529  
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1 U.S. at 409.

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IV

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For the reasons set forth above, the Petition for a Writ  
of Habeas Corpus is DENIED.

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The Clerk shall terminate any pending motions as moot,  
enter judgment in favor of Respondent and close the file.

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IT IS SO ORDERED.

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DATED 06/09/09



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THELTON E. HENDERSON  
United States District Judge

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