

JAN 27 2012

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>NATHANIEL R. ROUSE,</p> <p>Petitioner - Appellant,</p> <p>v.</p> <p>T. GOUGHNOUR,</p> <p>Respondent - Appellee.</p>
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No. 07-15855

D.C. No. 4:04-cv-01030-SBA

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Saundra B. Armstrong, District Judge, Presiding

Submitted January 17, 2012**

Before: LEAVY, TALLMAN, and CALLAHAN, Circuit Judges.

California state prisoner Nathaniel R. Rouse appeals pro se from the district court's judgment denying his 28 U.S.C. § 2254 habeas petition. We dismiss.

Rouse contends that he was denied parole in violation of his plea agreement,

* 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. Appellant. P. 34(a)(2).

and that the Governor’s decision to deny him parole was not supported by “some evidence” and therefore violated his due process rights. After briefing was completed in this case, this court held that a certificate of appealability (“COA”) is required to challenge the denial of parole. *See Hayward v. Marshall*, 603 F.3d 546, 554-55 (9th Cir. 2010) (en banc). Now the Supreme Court has held that the only federal right at issue in the parole context is procedural, and the only proper inquiry is what process the inmate received, not whether the state court decided the case correctly. *See Swarthout v. Cooke*, 131 S. Ct. 859, 863 (2011). Because Rouse raises no procedural challenges regarding his parole hearing, and jurists of reason would not find it debatable whether the petition states any valid claim of the denial of a constitutional right, a COA cannot issue, and we dismiss the appeal for lack of jurisdiction. *See* 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 478 (2000).

DISMISS.