

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LENNARD AL MENDOZA, } No. CV 18-40 SJO (FFM)
Petitioner, } ORDER SUMMARILY DISMISSING
v. } PETITION AND DENYING
J. GASTELO, Warden, } CERTIFICATE OF APPEALABILITY
Respondent. }

I. INTRODUCTION

On or about January 3, 2018, petitioner Lennard Al Mendoza, a California prisoner proceeding *pro se*, filed a petition for writ of habeas corpus (the “Petition” or “Pet.”) pursuant to 28 U.S.C. § 2254. Petitioner attacks a decision of the California Board of Parole Hearing (“BPH”) denying him parole. Specifically, petitioner argues that:

- (1) the BPH wrongfully denied parole on the basis of his past drug use and other factors allegedly having no bearing on his current dangerousness;
 - (2) the BPH did not give adequate weight to the fact that he was under 23 at the time of the commitment offense (second degree murder); and
 - (3) the BPH wrongfully failed to set a base term and adjusted based term in

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1 accordance with a December 2013 stipulated order in *In re Butler*, Cal. Ct.
2 Appeal No. A139411.

3 Petitioner contends that the BPH thereby violated his due process rights and
4 subjected him to cruel and unusual punishment. (Pet. Mem. at 3-4, 7.) The Court
5 finds that summary dismissal is warranted.

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7 II. ANALYSIS

8 Petitioner's due process claim is plainly lacking in merit. "There is no right
9 under the Federal Constitution to be conditionally released before the expiration of
10 a valid sentence." *Swarthout v. Cooke*, 562 U.S. 216, 220 (2011). Thus, the
11 beginning and the end of a federal habeas court's inquiry into a parole
12 determination is whether the petitioner received all due process during the
13 proceedings. *Id.* Due process in the parole context simply requires that the
14 petitioner "was allowed an opportunity to be heard and was provided a statement
15 of the reasons why parole was denied." *Id.*

16 Here, petitioner does not assert that he was never given an opportunity to be
17 heard. Nor does he claim that the BPH did not inform him of its reasons for
18 denying parole. In fact, the hearing transcript petitioner attaches to the Petition
19 reflects that he spoke at length during the hearing and was told why the BPH
20 denied parole. (*See* Attach. A to Pet.) Therefore, on the face of the Petition,
21 summary dismissal of petitioner's due process claim is warranted.

22 Petitioner's Eighth Amendment claim is equally meritless. Petitioner asserts
23 that if an inmate was under 23 at the time of the commitment offense, California
24 law requires that the BPH give "great weight" to factors pertinent to juvenile
25 offenders, such as diminished culpability. (Pet. Mem. at 13.) Petitioner contends
26 that the BPH only gave "lip service" to this requirement. (*Id.*) Such alleged
27 violations of state law are not cognizable on federal habeas review. *See Estelle v.*
28 *McGuire* , 502 U.S. 62, 68 (1991) ("We have stated many times that federal habeas

1 corpus relief does not lie for errors of state law” (internal quotation marks
2 omitted)).

3 Petitioner further asserts that the Supreme Court prohibits states from
4 sentencing juveniles convicted of “serious crime[s]” to life without the possibility
5 of parole. (Pet. Mem. at 4.) Petitioner entirely mischaracterizes the Supreme
6 Court’s recent juvenile sentencing precedents. In *Roper v. Simmons*, 543 U.S. 551,
7 575 (2005), the Supreme Court held that the death penalty cannot be imposed on
8 juvenile offenders. In *Graham v. Florida*, 560 U.S. 48, 75 (2010), the Supreme
9 Court held that the Eighth Amendment is violated when juveniles convicted of
10 *non-homicide offenses* are sentenced to life imprisonment without a meaningful
11 opportunity to obtain release. Neither *Roper* nor *Graham* applies herein.

12 Petitioner was convicted of a *homicide* offense, and he was not sentenced to death.

13 In *Miller v. Alabama*, 567 U.S. 460, 465 (2012), the Supreme Court held that
14 the Eighth Amendment prohibits the imposition of mandatory life imprisonment
15 without parole for those *under the age of 18* at the time of their commitment
16 offenses. Petitioner was 23 at the time of his offense. Accordingly, *Miller* does
17 not apply either.

18 Petitioner appears to argue that California courts have extended the
19 foregoing Supreme Court precedents to apply to persons, such as petitioner, who
20 (1) were over the age of 18 at the time they committed homicide offenses; and (2)
21 whose sentences include the possibility of parole, but who have been denied parole
22 multiple times. (See Pet. Mem. at 13-14.) This argument is unavailing. As
23 relevant, habeas relief may only be obtained for the unreasonable application of
24 clearly-established federal law, defined as controlling Supreme Court precedent.
25 28 U.S.C. § 2254(d); see *Williams v. Taylor*, 529 U.S. 362, 402 (2000).
26 Petitioner’s state court authorities are therefore inapposite.

27 Finally, petitioner’s claim that the BPH violated state law by failing to set a
28 base term and adjusted base term is not cognizable herein. See *Estelle, supra*; see

1 also *Langford v. Day*, 110 F.3d 1380, 1389 (9th Cir. 1996) (holding that
2 petitioner may not “transform a state-law issue into a federal one merely by
3 asserting a violation of due process”).

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5 III. CONCLUSION

6 In sum, the Court finds that the claims raised in the Petition are plainly
7 meritless and there is no possibility that petitioner can obtain relief on the grounds
8 presented. Accordingly, the petition is DISMISSED without prejudice. A
9 certificate of appealability is denied.

10 Let judgment be entered accordingly.

11 IT IS SO ORDERED.
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13 DATE: January 12, 2018

14 S. JAMES OTERO
United States District Judge

15 Presented by:

16 /S/ Frederick F. Mumm
17 FREDERICK F. MUMM
United States Magistrate Judge

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