UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

RONALD GLENN HANES, JR. Petitioner, v. CHARLES CALAHAN, WARDEN, Respondent.	NO. ED CV 18-00309-JLS(E) REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

This Report and Recommendation is submitted to the Honorable Josephine L. Staton, United States District Judge, pursuant to 28 U.S.C. section 636 and General Order 05-07 of the United States District Court for the Central District of California.

PROCEEDINGS

Petitioner filed a "Petition for Writ of Habeas Corpus By a Person in State Custody" on February 12, 2018. The Petition challenges the sufficiency of the evidence to support a decision of the Governor of California deeming Petitioner unsuitable for parole

and rejecting a contrary decision of the California Board of Prison Terms. It plainly appears from the face of the Petition that Petitioner is not entitled to federal habeas relief. Therefore, the Petition should be denied and dismissed with prejudice pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts.

BACKGROUND

In 1996, a jury found Petitioner guilty of second degree murder and corporal punishment or injury to a child (Petition, p. 2 & Ex. A, p. 1). Petitioner had beaten his girlfriend's three-year-old son, causing the child's death (id.).

After a hearing on December 6, 2016, a panel of the Board of Prison Terms deemed Petitioner suitable for parole. On March 24, 2007, the Governor issued a written order finding that, contrary to the decision of the Board, the evidence as a whole showed that Petitioner currently posed an unreasonable danger to society if released from prison (Petition, Ex. A). The Governor thus deemed Petitioner unsuitable for parole (id.). The state courts denied Petitioner's habeas corpus petitions challenging the Governor's decision (Petition, attached memorandum pp. 2-4 & Exs. F, G, H).

DISCUSSION

Federal habeas corpus relief may be granted "only on the ground that [Petitioner] is in custody in violation of the Constitution or

laws or treaties of the United States." 28 U.S.C. § 2254(a); see also Wilson v. Corcoran, 562 U.S. 1, 5 (2010) (per curiam) ("it is only noncompliance with *federal* law that renders a State's criminal judgment susceptible to collateral attack in the federal courts") (original emphasis).

"There is no constitutional or inherent right of a convicted person to be conditionally released before the expiration of a valid sentence." Greenholtz v. Inmates of Nebraska Penal and Correctional Complex, 442 U.S. 1, 7 (1979) ("Greenholtz"). In some instances, however, state statutes may create liberty interests in parole release entitled to protection under the federal Due Process Clause. See Bd. of Pardons v. Allen, 482 U.S. 369, 371 (1987); Greenholtz, 442 U.S. at 12. The Ninth Circuit has held that California's statutory provisions governing parole create such a liberty interest. See Hayward v. Marshall, 603 F.3d 546, 555 (9th Cir. 2010) (en banc), disapproved on other grounds, Swarthout v. Cooke, 562 U.S. 216 (2011).[1]

"In the context of parole, . . . the procedures required are minimal." Swarthout v. Cooke, 562 U.S. at 220. Due Process requires that the State furnish a parole applicant with an opportunity to be heard and a statement of reasons for a denial of parole. Greenholtz,

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[1] In Swarthout v. Cooke, the Supreme Court did not reach the question of whether California law creates a liberty interest in parole, but observed that the Ninth Circuit's affirmative answer to this question "is a reasonable application of our cases." Swarthout v. Cooke, 562 U.S. at 219-20 (citations omitted). The Ninth Circuit has held that Swarthout v. Cooke "did not disturb our conclusion that California law creates a liberty interest in parole." Roberts v. Hartley, 640 F.3d 1042, 1045 (9th Cir. 2011) (citation omitted).

442 U.S. at 16; see Swarthout v. Cooke, 562 U.S. at 220 (citation omitted). "The Constitution does not require more." Greenholtz, 442 U.S. at 16; accord Swarthout v. Cooke, 562 U.S. at 220 (citation omitted). Petitioner does not contend, and the record does not show, that Petitioner was denied these required procedural safeguards. See Swarthout v. Cooke, 562 U.S. at 220; see also Styre v. Adams, 645 F.3d 1106, 1108 (9th Cir. 2011) (Due Process Clause does not require Governor to hold second parole hearing before reversing suitability determination).

In In re Lawrence, 44 Cal. 4th 1181, 1212, 82 Cal. Rptr. 3d 169, 190 P.3d 535 (2008), the California Supreme Court held, as a matter of state law, that "some evidence" must exist to support a parole denial. In Swarthout v. Cooke, however, the United States Supreme Court rejected the contention that the federal Due Process Clause contains a guarantee of evidentiary sufficiency with respect to a parole determination. Swarthout v. Cooke, 562 U.S. at 220-22 ("No opinion of ours supports converting California's 'some evidence' rule into a substantive federal requirement."). Accordingly, Swarthout v. Cooke bars Petitioner's challenge to the sufficiency of the evidence to support the Governor's decision. See id. at 222 ("The Ninth Circuit's questionable finding that there was no evidence in the record supporting parole denial is irrelevant unless there is a federal right at stake") (emphasis original); Pearson v. Muntz, 639 F.3d 1185, 1191 (9th Cir. 2011) ("[Swarthout v. Cooke] makes clear that we cannot consider whether 'some evidence' of dangerousness supported a denial of parole on a petition filed under 28 U.S.C. § 2254."); see also Martinez v. Marshall, 508 Fed. App'x 614 (9th Cir. 2013) (Swarthout v.

Cooke forecloses claim that Governor denied parole based on insufficient evidence); Johnson v. Finn, 468 Fed. App'x 680, 683-84 (9th Cir. 2012) (same). Thus, Petitioner's challenge to the sufficiency of the evidence to support the Governor's parole decision fails to state a claim for federal habeas relief.

Any claim that the Governor's decision violated California law is unavailing in this Court. See Swarthout v. Cooke, 562 U.S. at 221 ("[T]he responsibility for assuring that the constitutionally adequate procedures governing California's parole system are properly applied rests with California courts, and is no part of the Ninth Circuit's business."); see also Roberts v. Hartley, 640 F.3d at 1046 (alleged misapplication of California's "some evidence" standard "does not provide a basis for granting a federal writ of habeas corpus") (citations omitted); see generally Wilson v. Corcoran, 562 U.S. at 5; Estelle v. McGuire, 502 U.S. 62, 67-68 (1991).

RECOMMENDATION

For the reasons discussed above, IT IS RECOMMENDED that the Court issue an order: (1) accepting and adopting this Report and

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Recommendation; and (2) denying and dismissing the Petition with prejudice.[2]

DATED: February 14, 2018.

/s/
CHARLES F. EICK
UNITED STATES MAGISTRATE JUDGE

[2] Because, as discussed herein, Petitioner's sufficiency challenge does not and cannot merit federal habeas relief, the granting of leave to amend the Petition would be an idle act.

NOTICE

Reports and Recommendations are not appealable to the Court of Appeals, but may be subject to the right of any party to file objections as provided in the Local Rules Governing the Duties of Magistrate Judges and review by the District Judge whose initials appear in the docket number. No notice of appeal pursuant to the Federal Rules of Appellate Procedure should be filed until entry of the judgment of the District Court.

If the District Judge enters judgment adverse to Petitioner, the District Judge will, at the same time, issue or deny a certificate of appealability. Within twenty (20) days of the filing of this Report and Recommendation, the parties may file written arguments regarding whether a certificate of appealability should issue.