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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

BRUCE NORMAN HEDGES,
Petitioner,
v
MATTHEW CATE,¹
Respondent.

No. C-07-01415-DLJ

ORDER DENYING PETITION FOR A
WRIT OF HABEAS CORPUS

On September 27, 2007, Petitioner Bruce Norman Hedges ("Petitioner") filed a petition for writ of habeas corpus. On February 27, 2008, Respondent Matthew Cate ("Respondent") filed an answer. On March 31, 2008, Petitioner filed a traverse. Having considered the papers submitted and the applicable law, the Court hereby DENIES the petition.

I. BACKGROUND

A. Factual Background and Procedural History

On November 14, 1980, armed with a loaded handgun, Petitioner broke into his employer's home. Pet. Ex. C at 83-84. He kidnapped his employer's wife, shot her in the back of the head, and disposed of her body in the Stanislaus River Canyon. Id. at 84. In March 1982, Petitioner was convicted of burglary, robbery, kidnapping, and first degree murder. He was sentenced to twenty-five years to

¹ At the time the instant petition was filed, Petitioner named James E. Tilton, the former Secretary of the Department of Corrections and Rehabilitation, as Respondent. At that time, Tilton was a proper respondent. See Ortiz-Sandoval v. Gomez, 81 F.3d 891, 894 (9th Cir. 1996). Matthew Cate has since replaced Tilton as the Secretary of the Department of Corrections and Rehabilitation. As a result, the Court hereby orders that Cate be substituted as the respondent.

1 life and has been incarcerated at Avenal State Prison.

2 At the time Petitioner was sentenced, California Penal Code §
3 3041 entitled him to annual parole suitability hearings. During
4 the time Petitioner has been incarcerated, however, the statute was
5 amended to allow the Board of Parole Hearings ("BPH") to defer his
6 parole suitability hearings for up to five year intervals.

7 BPH denied Petitioner parole on September 10, 1997, September
8 11, 2002, and April 11, 2006. In its April 11, 2006 denial, the
9 BPH concluded that Petitioner posed an "unreasonable risk of danger
10 to society or a threat to public safety." Pet. Ex. C. at 80. The
11 BPH concluded that Petitioner was unsuitable for parole because he
12 carried out the commitment offense "in an especially cruel and
13 callous manner," and because he had a "long record of violent and
14 assaultive criminality," including "a history of not only street
15 crimes but severe violent acts that could have caused multiple
16 deaths." Pet. Ex. C at 80-85. The BPH also found that
17 Petitioner's need for self-help and therapy, as well as his
18 disciplinary violations, made him unsuitable for parole. Pet. Ex.
19 C at 82-85. Finally, the BPH took into account such factors as the
20 San Joaquin County District Attorney's opposition to Petitioner's
21 release on parole. Pet. Ex. C at 80-85; Ex. E at 5. As a result,
22 the BPH denied parole and deferred Petitioner's next parole
23 suitability hearing for five years. Pet. Ex. C at 85-86.

24 On November 15, 2006, Petitioner filed a petition for writ of
25 habeas corpus in San Joaquin County Superior Court. The petition
26 was denied on February 14, 2007. On March 16, 2007, Petitioner
27 filed a habeas petition in the California Court of Appeal, which
28 was denied on March 22, 2007. On April 11, 2007, Petitioner filed

1 a habeas petition in the California Supreme Court, which was denied
2 on August 15, 2007.

3 On September 27, 2007, Petitioner filed the instant petition in
4 the United States District Court, Eastern District of California.
5 On November 11, 2008, the court issued an order reassigning the
6 case to this Court for all further proceedings. On November 17,
7 2008, Petitioner submitted a Request for Judicial Notice regarding
8 the California Legislature's recent amendment of California Penal
9 Code § 3041.5, which authorizes the BPH to deny an inmate a parole
10 suitability hearing for up to fifteen years.

11 In the instant petition, Petitioner seeks relief on the
12 following grounds: that the state court's decision (1) violates his
13 rights under the Due Process Clause of the Fourteenth Amendment,
14 (2) violates the Ex Post Facto Clause of the United States
15 Constitution, and (3) violates his rights under California Penal
16 Code § 3041.

17 **B. Legal Standard**

18 The Antiterrorism and Effective Death Penalty Act of 1996
19 ("AEDPA") allows an inmate in state custody to seek a writ of
20 habeas corpus in federal court. 28 U.S.C. § 2254. Under AEDPA, a
21 writ of habeas corpus may not be granted unless the state court's
22 adjudication of any claim on the merits: "(1) resulted in a
23 decision that was contrary to, or involved an unreasonable
24 application of, clearly established Federal law, as determined by
25 the Supreme Court of the United States; or (2) resulted in a
26 decision that was based on an unreasonable determination of the
27 facts in light of the evidence presented in the State court
28 proceeding." 28 U.S.C. § 2254(d).

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2 **II. DISCUSSION**

3 **A. Procedural Bars**

4 The parties do not dispute that the instant petition is timely,
5 that venue is proper, and that none of Petitioner's claims are
6 procedurally defaulted. There is some uncertainty as to whether
7 some of Petitioner's claims have been exhausted in state court, but
8 the Court need not reach this issue because, as described below,
9 all of Petitioner's claims fail on the merits.

10 **B. Due Process Claims**

11 **1. Parole Suitability Determination**

12 As a matter of federal due process, California inmates possess
13 a liberty interest in parole. See Irons v. Carey, 505 F.3d 846,
14 850 (9th Cir. 2007). In order to comport with due process, a
15 parole suitability determination must be supported by "some
16 evidence." Id. at 851. "Some evidence" is "any evidence in the
17 record" that could support the BPH's conclusion. Sass v. Cal. Bd.
18 of Prison Terms, 461 F.3d 1123, 1128-29 (9th Cir. 2006). What
19 constitutes "some evidence" is determined according to state law.
20 See Irons, 505 F.3d at 851.

21 Here, Petitioner contends that the BPH's decision was not
22 supported by "some evidence" because his commitment offense and the
23 San Joaquin County District Attorney's opposition to parole do not
24 constitute "some evidence." Petitioner is incorrect. California
25 law requires that the BPH consider various factors, including
26 Petitioner's commitment offense, as well as public opinion
27 regarding Petitioner's release, to determine whether Petitioner is
28 suitable for parole. See Cal. Code Regs. tit. 15, §§ 2402(b)-(d),

1 2028(a); Cal. Penal Code § 3043.5(b). As a result, these
2 considerations constitute "some evidence" in support of BPH's
3 decision.

4 In addition, Petitioner claims that the BPH improperly relied
5 on a 2002 psychological evaluation of Petitioner. This argument is
6 misplaced, because the BPH did not rely on the 2002 psychological
7 evaluation when it determined that Petitioner was unsuitable for
8 parole. Pet. Ex. C at 82. Even if the BPH did rely on the 2002
9 psychological evaluation, however, as a matter of California law,
10 psychological evaluations constitute "some evidence." See Cal.
11 Code of Regs. tit. 15, § 2402(b).

12 Accordingly, Petitioner's claim that the California court's
13 decision is contrary to, or an unreasonable application of, clearly
14 established federal law fails. In addition, the state court's
15 decision was not an unreasonable determination of the facts in
16 light of the evidence presented.

17 **C. Ex Post Facto Claim**

18 Petitioner claims that the state court's decision upholding the
19 BPH's decision to set his parole hearings at five year intervals
20 under the amended California Penal Code § 3041, rather than at one
21 year intervals under the former version of the statute, violates the
22 Ex Post Facto Clause of the United States Constitution.

23 The Constitution prohibits the states from passing any "ex post
24 facto Law." U.S. Const., Art. I, § 10. The Supreme Court has
25 expressly held that the amended California Penal Code § 3041,
26 allowing for five year intervals between parole hearings, does not
27 violate the Ex Post Facto Clause of the United States Constitution.
28 See California Dept. of Corr. v. Morales, 514 U.S. 499, 506-13

1 (1995).

2 Because Petitioner's claim has already been rejected by the
3 Supreme Court, this claim fails.² See id.

4 **D. California Penal Code § 3041 Claims**

5 **1. California Penal Code § 3041(a)**

6 California Penal Code § 3041(a) requires the BPH to set a parole
7 release date for an inmate serving an indeterminate life sentence
8 "in a manner that will provide uniform terms for offenses of similar
9 gravity and magnitude with respect to their threat to the public."

10 Petitioner claims that the BPH violated his due process rights
11 when it failed to compare Petitioner's criminal conduct against that
12 of other inmates convicted of the same offense. This claim fails on
13 multiple fronts. First, to the extent that Petitioner argues that
14 the BPH's failure to apply California Penal Code § 3041(a) is a
15 violation of California law, this is a state law claim not
16 cognizable in federal court. See Estelle v. McGuire, 502 U.S. 62,
17 67-68 (1991).

18 In addition, Petitioner was not entitled to a "uniform terms"
19 determination under § 3041(a). An analysis of a prisoner's threat
20 to public safety under California Penal Code § 3041(b) precedes the
21 setting of a uniform release date under § 3041(a). See In re
22 Dannenberq, 34 Cal. 4th 1061, 1081-82 (2005). Because the BPH found
23 Petitioner unsuitable for parole under California Penal Code

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25 ² As noted above, on November 17, 2008, Petitioner filed a
26 Request for Judicial Notice, seeking a declaration from this Court
27 that the California Legislature's recent amendment of California Penal
28 Code § 3041.5 violates the Ex Post Facto Clause of the United States
Constitution. Because Respondent has never applied the amended
statute to Petitioner, Petitioner lacks standing to make such a
challenge.

1 § 3041(b), it was precluded from setting a uniform release date
2 under § 3041(a). Accordingly, Petitioner had no rights under §
3 3041(a).

4 Even if the Court were to construe Petitioner's claim as a
5 federal due process claim, the California Supreme Court has
6 expressly held that California Penal Code § 3041(a) does not create
7 a liberty interest in parole. See In re Dannenberg, 34 Cal. 4th at
8 1081-82. This Court is bound by the California Supreme Court's
9 determination. See Gurley v. Rhoden, 421 U.S. 200, 208 (1975). As
10 a result, this claim does not raise any issues cognizable on federal
11 habeas review.

12 **2. California Penal Code § 3041.5(b)(2)**

13 California Penal Code § 3041.5(b)(2) provides that the BPH must
14 communicate its denial of parole in "a written statement" that
15 "set[s] forth the reasons for refusal to set a parole date." Cal.
16 Penal Code § 3041.5(b)(2).

17 Petitioner claims that the BPH violated California Penal Code §
18 3041.5(b)(2) because, even though it provided him with a copy of the
19 hearing transcript, it did not issue a separate written statement of
20 its reasons for denying him parole. As with Petitioner's California
21 Penal Code § 3041(a) claim, this claim is a state law claim that is
22 not cognizable in federal court. See Estelle, 502 U.S. at 67-68.

23 Even if the Court were to liberally construe this claim as a
24 federal due process claim, it fails. At a parole hearing, due
25 process requires that a parole board communicate the reasons for its
26 decision. See Greenholtz v. Inmates of Neb. Penal & Corr. Complex,
27 442 U.S. 1, 15 (1979). Here, the BPH gave Petitioner its statement
28 of reasons for denying parole both orally at the April 11, 2006

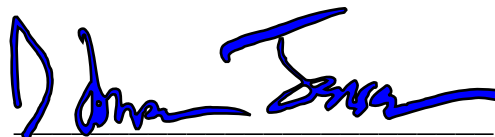
1 hearing, and in a written transcript of that hearing. Pet. Ex. C at
2 80-85. Both the oral statement of reasons and written transcript
3 satisfy the communication requirement of Greenholtz.

4 **III. CONCLUSION**

5 Based on the foregoing, the Court hereby DENIES the petition.

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7 IT IS SO ORDERED

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9 Dated: April 15, 2009



10 D. Lowell Jensen
11 United States District Judge
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