

I

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2 On July 7, 1981, Salgado was a passenger in a car driven
3 by a fellow 18th Street gang member. When the vehicle stopped in
4 front of a residence, Salgado fired three or four shots at four men
5 sitting on the porch, striking and killing one of them. Doc #1 at
6 54. Apparently, Salgado was motivated to shoot because at least
7 one of the men had been harassing his girlfriend. Id. Salgado was
8 convicted of second-degree murder and was sentenced to fifteen
9 years to life. Id at 16.

10 The California Department of Corrections set Salgado's
11 minimum eligible parole date at December 5, 1991. Id. The Board
12 of Prison Terms (BPT) denied Salgado parole seven times beginning
13 in 1990. Id at 20. On May 3, 2006, the BPT found Salgado suitable
14 for parole. Id.

15 The governor reversed the BPT's suitability determination
16 on September 22, 2006. Id at 156. In his decision, the governor
17 emphasized "the gravity of the second-degree murder perpetrated by
18 Mr Salgado." Id at 157. In addition to the gravity of the
19 offense, the governor cited to Salgado's drug use and discipline
20 record in prison, gang membership that continued until "seven or
21 eight years ago" and the Los Angeles county district attorney's
22 opposition to Salgado's parole. Id at 156-57.

23 Salgado unsuccessfully challenged the governor's decision
24 in California superior court, id at 54, and in the California
25 Supreme Court, id at 58. Because the California Supreme Court
26 denied the petition without comment, the superior court's decision
27 is the last reasoned decision. Ylst v Nunnemaker, 501 US 797, 803-

1 04 (1991). After the state court denied his petition for review on
2 June 18, 2008, Salgado filed the instant federal petition for a
3 writ of habeas corpus. Doc #1.

4
5 II

6 The Antiterrorism and Effective Death Penalty Act of 1996
7 ("AEDPA"), codified under 28 USC § 2254, provides "the exclusive
8 vehicle for a habeas petition by a state prisoner in custody
9 pursuant to a state court judgment, even when the petitioner is not
10 challenging his underlying state court conviction." White v
11 Lambert, 370 F3d 1002, 1009-10 (9th Cir 2004). Under AEDPA, this
12 court may entertain a petition for habeas relief on behalf of a
13 California state inmate "only on the ground that he is in custody
14 in violation of the Constitution or laws or treaties of the United
15 States." 28 USC § 2254(a).

16 The writ may not be granted unless the state court's
17 adjudication of any claim on the merits:

18 (1) resulted in a decision that was contrary to, or involved
19 an unreasonable application of, clearly established Federal
20 law, as determined by the Supreme Court of the United States;
21 or (2) resulted in a decision that was based on an
unreasonable determination of the facts in light of the
evidence presented in the State court proceeding.

22 Id at § 2254(d). Under this standard, federal habeas relief will
23 not be granted "simply because [this] court concludes in its
24 independent judgment that the relevant state-court decision applied
25 clearly established federal law erroneously or incorrectly.

26 Rather, that application must also be unreasonable." Williams v
27 Taylor, 529 US 362, 411 (2000).

1 various factors to reach its decision, including the prisoner's
2 social history, past criminal history, and base and other
3 commitment offenses, including behavior before, during and after
4 the crime. See *id* § 2402(b)-(d). The governor must consider these
5 same factors in determining whether to reverse a grant of parole by
6 the board. See Cal Const art 5, § 8(b); In re Rosenkrantz, 29 Cal
7 4th 616, 665 (2002).

8 California's parole scheme "gives rise to a cognizable
9 liberty interest in release on parole which cannot be denied
10 without adequate procedural due process protections." Sass v
11 California Bd of Prison Terms, 461 F3d 1123, 1128 (9th Cir 2006);
12 McQuillion v Duncan, 306 F3d 895, 902 (9th Cir 2002). "The liberty
13 interest is created, not upon the grant of a parole date, but upon
14 the incarceration of the inmate." Biggs v Terhune, 334 F3d 910,
15 914-15 (9th Cir 2003).

16 Salgado's due process rights require that "some evidence"
17 support the governor's decision finding him unsuitable for parole.
18 Irons v Carey, 505 F3d 846, 851 (9th Cir 2007) (holding that "some
19 evidence" standard for disciplinary hearings outlined in
20 Superintendent v Hill, 472 US 445, 454-55 (1985), applies to parole
21 decisions in § 2254 habeas petition); Sass, 461 F3d at 1125 (same);
22 Biggs, 334 F3d at 915 (same); McQuillion, 306 F2d at 904 (same).
23 This "some evidence" standard is minimally stringent and ensures
24 that the governor's decision was not arbitrary. Hill, 472 US at
25 457. Determining whether this requirement is satisfied "does not
26 require examination of the entire record, independent assessment of
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1 the credibility of witnesses, or weighing of the evidence." Id at
2 455-56 (quoted in Sass, 461 F3d at 1128).

3 Here, the state court's decision to uphold the governor's
4 parole reversal was not contrary to clearly established law. The
5 governor supported his decision with "some evidence" when he
6 pointed to the circumstances of Salgado's crime along with his
7 prison drug use, discipline record and history of gang membership.
8 Doc #1 at 156-57. The governor's reference to post-conviction
9 factors in the record indicates his decision was neither arbitrary
10 nor based solely on an unchanging circumstance. The court need not
11 and should not determine whether it would reach the same decision
12 as the governor. The evidence used by the governor reasonably
13 supports the conclusion that Salgado is not currently suitable for
14 parole and thus satisfies minimum due process requirements.

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16 IV

17 Because the record contains, at a minimum, some evidence
18 to support the governor's decision, the petition for a writ of
19 habeas corpus, Doc #1, is DENIED. The clerk shall enter judgment,
20 terminate all motions and close the file.

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22 IT IS SO ORDERED.

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26 VAUGHN R WALKER
27 United States District Chief Judge
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