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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

JULIUS T. YATES,

1:10-cv-00424-OWW-SMS (HC)

Petitioner,

ORDER DECLINING TO ADOPT FINDINGS  
AND RECOMMENDATION, DISMISSING  
PETITION FOR WRIT OF HABEAS CORPUS,  
AND DECLINING TO ISSUE A  
CERTIFICATE OF APPEALABILITY

v.

J. D. HARTLEY,

[Doc. 14]

Respondent.

\_\_\_\_\_  
Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

In the instant petition, Petitioner claims there was no evidence to support the Board of Parole Hearings' September 22, 2008 decision finding him unsuitable for release.

On September 1, 2010, the Magistrate Judge issued Findings and Recommendations to deny the instant petition.

On September 24, 2010, Petitioner filed objections to the Findings and Recommendations.

Because California's statutory parole scheme guarantees that prisoners will not be denied parole absent some evidence of present dangerousness, the Ninth Circuit Court of Appeals held that California law creates a liberty interest in parole that may be enforced under the Due Process Clause. Hayward v. Marshall, 602 F.3d 546, 561-563 (9th Cir.2010); Pearson v. Muntz, 606 F.3d 606, 608-609 (9th Cir. 2010); Cooke v. Solis, 606 F.3d 1206, 1213 (2010), *rev'd*, Swarthout

1 v. Cooke, \_\_\_ U.S. \_\_\_, \_\_\_ S.Ct. \_\_\_, 2011 WL 197627 (Jan. 24, 2011). The Ninth Circuit  
2 instructed reviewing federal district courts to determine whether California’s application of  
3 California’s “some evidence” rule was unreasonable or was based on an unreasonable  
4 determination of the facts in light of the evidence. Hayward v. Marshall, 603 F.3d at 563;  
5 Pearson v. Muntz, 606 F.3d at 608.

6 On January 24, 2011, the Supreme Court issued a *per curiam* opinion in Swarthout v.  
7 Cooke, \_\_\_ U.S. \_\_\_, \_\_\_ S.Ct. \_\_\_, 2011 WL 197627 (Jan. 24, 2011). In Swarthout, the  
8 Supreme Court held that “the responsibility for assuring that the constitutionally adequate  
9 procedures governing California’s parole system are properly applied rests with California  
10 courts, and is no part of the Ninth Circuit’s business.” The federal habeas court’s inquiry into  
11 whether a prisoner denied parole received due process is limited to determining whether the  
12 prisoner “was allowed an opportunity to be heard and was provided a statement of the reasons  
13 why parole was denied.” *Id.*, *citing*, Greenholtz v. Inmates of Neb. Penal and Correctional  
14 Complex, 442 U.S. 1, 16 (1979). Review of the instant case reveals Petitioner was present at his  
15 parole hearing, was given an opportunity to be heard, and was provided a statement of reasons  
16 for the parole board’s decision. (See Resp’s Ans. Ex. 5.) “The Constitution does not require  
17 more [process].” Greenholtz, 442 U.S. at 16. Therefore, the instant petition does not present  
18 cognizable claims for relief and must be summarily dismissed.

19 Certificate of Appealability

20 A state prisoner seeking a writ of habeas corpus has no absolute entitlement to appeal a  
21 district court’s denial of his petition, and an appeal is only allowed in certain circumstances.  
22 Miller-El v. Cockrell, 537 U.S. 322, 335-36 (2003). The controlling statute in determining  
23 whether to issue a certificate of appealability is 28 U.S.C. § 2253, which provides as follows:

24 (a) In a habeas corpus proceeding or a proceeding under section 2255 before a  
25 district judge, the final order shall be subject to review, on appeal, by the court  
of appeals for the circuit in which the proceeding is held.

26 (b) There shall be no right of appeal from a final order in a proceeding to test the  
27 validity of a warrant to remove to another district or place for commitment or trial  
28 a person charged with a criminal offense against the United States, or to test the  
validity of such person’s detention pending removal proceedings.

1 (c) (1) Unless a circuit justice or judge issues a certificate of appealability, an  
2 appeal may not be taken to the court of appeals from—

3 (A) the final order in a habeas corpus proceeding in which the  
4 detention complained of arises out of process issued by a State  
5 court; or

6 (B) the final order in a proceeding under section 2255.

7 (2) A certificate of appealability may issue under paragraph (1) only if the  
8 applicant has made a substantial showing of the denial of a constitutional right.

9 (3) The certificate of appealability under paragraph (1) shall indicate which  
10 specific issue or issues satisfy the showing required by paragraph (2).

11 If a court denies a petitioner’s petition, the court may only issue a certificate of  
12 appealability “if jurists of reason could disagree with the district court’s resolution of his  
13 constitutional claims or that jurists could conclude the issues presented are adequate to deserve  
14 encouragement to proceed further.” Miller-El, 537 U.S. at 327; Slack v. McDaniel, 529 U.S. 473,  
15 484 (2000). While the petitioner is not required to prove the merits of his case, he must  
16 demonstrate “something more than the absence of frivolity or the existence of mere good faith on  
17 his . . . part.” Miller-El, 537 U.S. at 338.

18 In the present case, the Court finds that reasonable jurists would not find the Court’s  
19 determination that Petitioner is not entitled to federal habeas corpus relief debatable, wrong, or  
20 deserving of encouragement to proceed further. Petitioner has not made the required substantial  
21 showing of the denial of a constitutional right. Accordingly, the Court hereby **DECLINES** to  
22 issue a certificate of appealability.

23 Accordingly, IT IS HEREBY ORDERED:

- 24 1) The Court declines to adopt the Findings and Recommendations;  
25 2) The petition for writ of habeas corpus is **SUMMARILY DISMISSED** with prejudice;  
26 3) The Clerk of Court is **DIRECTED** to enter judgment and close the case; and  
27 4) The Court **DECLINES** to issue a certificate of appealability.

28 IT IS SO ORDERED.

**Dated: February 2, 2011**

**/s/ Oliver W. Wanger**  
**UNITED STATES DISTRICT JUDGE**