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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DAVID FLORES,)	1:10-CV-01375 OWW GSA HC
)	
Petitioner,)	ORDER DECLINING TO ADOPT FINDINGS AND RECOMMENDATION
)	[Doc. #13]
v.)	
)	ORDER GRANTING PETITIONER'S MOTION TO DISMISS AND DISMISSING
JAMES D. HARTLEY,)	PETITION FOR WRIT OF HABEAS CORPUS [Doc. #14]
Respondent.)	
		ORDER DIRECTING CLERK OF COURT TO ENTER JUDGMENT
		ORDER DECLINING TO ISSUE CERTIFICATE OF APPEALABILITY

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

On December 16, 2010, the Magistrate Judge issued a [Findings and Recommendation](#) that recommended the petition be DENIED with prejudice. The Magistrate Judge further recommended that the Clerk of Court be DIRECTED to enter judgment. The Findings and Recommendation was served on all parties and contained notice that any objections were to be filed within thirty (30) days

1 of the date of service of the order. On January 12, 2011, Petitioner filed a [motion to dismiss](#) the
2 petition. Respondent did not file an opposition.

3 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted a *de*
4 *novo* review of the case. The Magistrate Judge's Findings and Recommendation was based on Ninth
5 Circuit authority at the time. See Hayward v. Marshall, 602 F.3d 546, 561-563 (9th Cir.2010);
6 Pearson v. Muntz, 606 F.3d 606, 608-609 (9th Cir. 2010); Cooke v. Solis, 606 F.3d 1206, 1213
7 (2010), *rev'd*, Swarthout v. Cooke, ___ U.S. ___, 131 S.Ct. 859, 2011 WL 197627 (Jan. 24, 2011).
8 The Ninth Circuit had instructed reviewing federal district courts to determine whether California's
9 application of California's "some evidence" rule was unreasonable or was based on an unreasonable
10 determination of the facts in light of the evidence. Hayward v. Marshall. 603 F.3d at 563; Pearson v.
11 Muntz, 606 F.3d at 608.

12 On January 24, 2011, the Supreme Court issued a *per curiam* opinion in Swarthout v. Cooke,
13 ___ U.S. ___, 131 S.Ct. 859, 2011 WL 197627 (Jan. 24, 2011). In Swarthout, the Supreme Court
14 reversed the Ninth Circuit and held that "the responsibility for assuring that the constitutionally
15 adequate procedures governing California's parole system are properly applied rests with California
16 courts, and is no part of the Ninth Circuit's business." Id., 131 S.Ct. at 863. The Supreme Court
17 instructed that a federal habeas court's inquiry into whether a prisoner denied parole received due
18 process is limited to determining whether the prisoner "was allowed an opportunity to be heard and
19 was provided a statement of the reasons why parole was denied." Id., at 862, *citing*, Greenholtz v.
20 Inmates of Neb. Penal and Correctional Complex, 442 U.S. 1, 16 (1979). Review of the instant case
21 reveals Petitioner was present at his parole hearing, was given an opportunity to be heard, and was
22 provided a statement of reasons for the parole board's decision. (See Answer Ex. 1.) According to
23 the Supreme Court, this is "the beginning and the end of the federal habeas courts' inquiry into
24 whether [the prisoner] received due process." Swarthout, 131 S.Ct. at 862. "The Constitution does
25 not require more [process]." Greenholtz, 442 U.S. at 16. Therefore, the instant petition does not
26 present cognizable claims for relief and should be dismissed.

27 A state prisoner seeking a writ of habeas corpus has no absolute entitlement to appeal a
28 district court's denial of his petition, and an appeal is only allowed in certain circumstances. Miller-

1 El v. Cockrell, 537 U.S. 322, 335-36 (2003). The controlling statute in determining whether to issue
2 a certificate of appealability is 28 U.S.C. § 2253, which provides as follows:

3 (a) In a habeas corpus proceeding or a proceeding under section 2255 before a
4 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.

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

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

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

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

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

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

19 If a court denies a petitioner's petition, the court may only issue a certificate of appealability
20 "if jurists of reason could disagree with the district court's resolution of his constitutional claims or
21 that jurists could conclude the issues presented are adequate to deserve encouragement to proceed
22 further." Miller-El, 537 U.S. at 327; Slack v. McDaniel, 529 U.S. 473, 484 (2000). While the
23 petitioner is not required to prove the merits of his case, he must demonstrate "something more than
24 the absence of frivolity or the existence of mere good faith on his . . . part." Miller-El, 537 U.S. at
25 338.

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

Accordingly, IT IS HEREBY ORDERED that:

1. The Court **DECLINES** to adopt the Findings and Recommendation issued December 16,

1 2010;

2 2. Petitioner's motion to dismiss the petition is GRANTED;

3 3. The Petition for Writ of Habeas Corpus is DISMISSED with prejudice;

4 4. The Clerk of Court is DIRECTED to enter judgment; and

5 5. The Court DECLINES to issue a certificate of appealability.

6 IT IS SO ORDERED.

7 **Dated: February 25, 2011**

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE

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