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GEORGE MARRE,)	1:10-CV-01823 LJO GSA HC
)	
Petitioner,)	ORDER SUMMARILY DISMISSING
)	PETITION FOR WRIT OF HABEAS
v.)	CORPUS
)	
MAURICE JUNIOUS, Warden,)	ORDER DIRECTING CLERK OF COURT
)	TO ENTER JUDGMENT AND CLOSE CASE
)	
Respondent.)	ORDER DECLINING ISSUANCE OF
)	CERTIFICATE OF APPEALABILITY

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 v. Cooke, ___ U.S. ___, ___ S.Ct. ___, 2011 WL 197627 (Jan. 24, 2011) (per curiam). The Ninth Circuit

1 instructed reviewing federal district courts to determine whether California's application of
2 California's "some evidence" rule was unreasonable or was based on an unreasonable determination
3 of the facts in light of the evidence. Hayward v. Marshall, 603 F.3d at 563; Pearson v. Muntz, 606
4 F.3d at 608.

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

18 Certificate of Appealability

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

23 (a) In a habeas corpus proceeding or a proceeding under section 2255 before a
24 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.

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

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

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

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

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

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

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

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

21 Accordingly, IT IS HEREBY ORDERED:

- 22 1) The petition for writ of habeas corpus is SUMMARILY DISMISSED with prejudice;
23 2) The Clerk of Court is DIRECTED to enter judgment and close the case; and
24 3) The Court DECLINES to issue a certificate of appealability.

25 IT IS SO ORDERED.

26 **Dated: January 24, 2011**

27 **/s/ Lawrence J. O'Neill**
28 **UNITED STATES DISTRICT JUDGE**