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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

RALPH KELLY HAWTHORNE, JR.,	)	1:11-CV-01618 AWI BAM HC
	)	
Petitioner,	)	ORDER DISMISSING PETITION FOR WRIT
	)	OF HABEAS CORPUS
v.	)	
	)	ORDER DIRECTING CLERK OF COURT
	)	TO ENTER JUDGMENT AND CLOSE CASE
JAMES D. HARTLEY, Warden,	)	
	)	ORDER DECLINING ISSUANCE OF
Respondent.	)	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 September 23, 2011, Petitioner filed the instant petition for writ of habeas corpus. He challenges a June 10, 2010, California Board of Parole Hearings decision denying parole. He claims the decision of the parole board violated his due process rights.

A. Preliminary Review of Petition

Rule 4 of the Rules Governing Section 2254 Cases provides in pertinent part:

If it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court, the judge must dismiss the petition and direct the clerk to notify the petitioner.

The Advisory Committee Notes to Rule 8 indicate that the court may dismiss a petition for writ of habeas corpus, either on its own motion under Rule 4, pursuant to the respondent’s motion to dismiss, or after an answer to the petition has been filed. See Herbst v. Cook, 260 F.3d 1039 (9<sup>th</sup> Cir.2001). A petition for habeas corpus should not be dismissed without leave to amend unless it appears that no tenable claim for relief can be pleaded were such leave granted. Jarvis v. Nelson, 440 F.2d 13, 14 (9<sup>th</sup> Cir. 1971).

1 B. Failure to State a Cognizable Ground for Relief

2 On January 24, 2011, the Supreme Court decided Swarthout v. Cooke, \_\_\_ U.S. \_\_\_, 131  
3 S.Ct. 859, 2011 WL 197627 (2011), and held that “the responsibility for assuring that the  
4 constitutionally adequate procedures governing California’s parole system are properly applied rests  
5 with California courts, and is no part of the Ninth Circuit’s business.” Id., 131 S.Ct. at 863. The  
6 Supreme Court stated that a federal habeas court’s inquiry into whether a prisoner denied parole  
7 received due process is limited to determining whether the prisoner “was allowed an opportunity to  
8 be heard and was provided a statement of the reasons why parole was denied.” Id., at 862, *citing*,  
9 Greenholtz v. Inmates of Neb. Penal and Correctional Complex, 442 U.S. 1, 16 (1979). Review of  
10 the instant case reveals Petitioner was present at his parole hearing, was given an opportunity to be  
11 heard, and was provided a statement of reasons for the parole board’s decision. (See Attachments to  
12 Petition.) According to the Supreme Court, this is “the beginning and the end of the federal habeas  
13 courts’ inquiry into whether [the prisoner] received due process.” Swarthout, 131 S.Ct. at 862. “The  
14 Constitution does not require more [process].” Greenholtz, 442 U.S. at 16. Therefore, the instant  
15 petition does not present cognizable claims for relief, and no cognizable claim could be raised if  
16 leave to amend were granted. Jarvis v. Nelson, 440 F.2d 13, 14 (9<sup>th</sup> Cir. 1971). The petition must be  
17 dismissed.

18 C. 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—

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

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

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

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

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

In the present case, the Court finds that reasonable jurists would not find the Court’s determination that Petitioner is not entitled to federal habeas corpus relief debatable, wrong, or 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.

**ORDER**

Accordingly, IT IS HEREBY ORDERED:

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

IT IS SO ORDERED.

Dated: February 4, 2012

  
 CHIEF UNITED STATES DISTRICT JUDGE