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6 **UNITED STATES DISTRICT COURT**

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8 EASTERN DISTRICT OF CALIFORNIA

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12 ELLIS LORENZO LOCKETT,

13 Petitioner,

14 vs.

15 RALPH DIAZ,

16 Respondent.

) Case No.:1:12-cv-01834-LJO-SAB (HC)

)  
) FINDINGS AND RECOMMENDATION  
) REGARDING PETITION FOR WRIT OF  
) HABEAS CORPUS

) [Doc. 1]

17  
18 Petitioner is proceeding pro se with a petition for writ of habeas corpus pursuant to 28  
19 U.S.C. § 2254.

20 Petitioner filed the instant petition for writ of habeas corpus on September 12, 2012, in  
21 the United States District Court for the Northern District of California. On November 7, 2012,  
22 the petition was transferred to this Court for lack of jurisdiction. Petitioner contends the Board  
23 of Parole Hearings' April 26, 2011, denial of release on parole violated his constitutional rights.

24 DISCUSSION

25 I. Preliminary Review of Petition

26 Rule 4 of the Rules Governing Section 2254 Cases provides in pertinent part: "If it  
27 plainly appears from the petition and any attached exhibits that the petitioner is not entitled to  
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1 relief in the district court, the judge must dismiss the petition and direct the clerk to notify the  
2 petitioner.” A petition for habeas corpus should not be dismissed without leave to amend unless  
3 it appears that no tenable claim for relief can be pleaded were such leave granted. Jarvis v.  
4 Nelson, 440 F.2d 13, 14 (9th Cir. 1971). The Court will review the instant petition pursuant to  
5 its authority under Rule 4.  
6

7 II. Failure to State a Cognizable Ground for Relief

8 In the context of a state parole hearing, a federal court’s habeas corpus review is  
9 extremely limited. The United States Supreme Court held in Swarthout v. Cooke, \_\_\_ U.S. \_\_\_,  
10 131 S.Ct. 859, 863 (2011) (per curiam) that “the responsibility for assuring that the  
11 constitutionally adequate procedures governing California’s parole system are properly applied  
12 rests with California courts,” and not with the federal court. Since there is no right under the  
13 United States Constitution to be released before the expiration of a valid sentence, the federal  
14 court’s review role is to focus solely on whether a prisoner denied parole received due process-  
15 defined as whether the prisoner “was allowed an opportunity to be heard and was provided a  
16 statement of the reasons why parole was denied.” Id., at 862, citing, Greenholtz v. Inmates of  
17 Neb. Penal and Correctional Complex, 442 U.S. 1, 16 (1979). “The Constitution does not  
18 require more [process].” Id.  
19

20 I find that a review of the instant case reveals Petitioner was present at his parole hearing,  
21 was given an opportunity to be heard, and was provided a statement of reasons for the parole  
22 board’s decision. (See Memo in Support of Petition, Ex. E.). Accordingly, under Swarthout, the  
23 federal court’s inquiry ends and the petitioner’s present petition fails to state a claim upon which  
24 relief can be granted, and hence, the instant petition for writ of habeas corpus must be dismissed.  
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26 Additionally, because there is no tenable claim for relief that can be pled by further  
27 amendment to the petition, the granting of leave to amend would be futile and result in the same  
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1 findings and recommendation. Therefore, the instant petition for writ of habeas corpus must be  
2 dismissed. Jarvis v. Nelson, 440 F.3d at 14.

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4 RECOMMENDATION

5 Based on the foregoing, it is HEREBY RECOMMENDED that:

- 6 1. The petition for writ of habeas corpus be DISMISSED with prejudice; and  
7 2. The Clerk of Court is DIRECTED to enter judgment and close the case.

8 These proposed findings of fact and recommendations are submitted to the assigned  
9 United States District Court Judge, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and  
10 Rule 304 of the Local Rules of Practice for the United States District Court, Eastern District of  
11 California. Within thirty (30) days after being served with a copy, any party may file written  
12 objections with the court and serve a copy on all parties. Such a document should be captioned  
13 “Objections to Magistrate Judge’s Findings and Recommendation.” Replies to the objections  
14 shall be served and filed within fourteen (14) days after service of the objections. The Court will  
15 then review the Magistrate Judge’s ruling pursuant to 28 U.S.C. § 636 (b)(1)(C). The parties are  
16 advised that failure to file objections within the specified time may waive the right to appeal the  
17 District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).  
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19 IT IS SO ORDERED.

20 Dated: January 9, 2013

21 /s/ Stanley A. Boone  
22 UNITED STATES MAGISTRATE JUDGE  
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