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6 UNITED STATES DISTRICT COURT
7 FOR THE EASTERN DISTRICT OF CALIFORNIA
8

9 MICHAEL ROY JOHNSON,

10 Petitioner,

11 v.

12 ANDRE MATEVOUSIAN,

13 Respondent.
14

Case No. 1:16-cv-01304-JDP

ORDER DENYING PETITION FOR WRIT
OF HABEAS CORPUS AND CERTIFICATE
OF APPEALABILITY

ECF No. 1

15 Petitioner Michael Roy Johnson, a state prisoner without counsel, seeks a writ of habeas
16 corpus under 28 U.S.C. § 2241. For the reasons discussed below, the court will deny the
17 petition and decline to issue a certificate of appealability.

18 **I. Background**

19 In May 1990, petitioner approached a woman waiting at a bus stop and offered her a ride.
20 *See* ECF No. 14-1 at 8. Petitioner convinced the woman to walk with him to his house and to
21 enter his garage. *See id.* Petitioner then shut the garage door, wrapped a telephone cord
22 around the woman's neck, and raped her. *See id.* He also sexually assaulted the victim while
23 holding a cigarette lighter to her head. *See id.* at 13. The victim reported that she was pregnant
24 at the time of the rape and that she had an abortion a few weeks later. *See id.* at 15. The victim
25 also quit her job due to the emotional effects of the offense and required counseling. *See id.* at
26 55. Petitioner was charged with rape while armed, and he pleaded guilty. *See id.* at 5, 14.

27 Petitioner committed the May 1990 rape while he was out on bond on a separate charge
28 of rape while armed. *See id.* at 5. According to a police report, in December 1989, petitioner

1 entered his ex-girlfriend's home, grabbed a knife, and forced her to have intercourse with him.
2 *See id.* at 13. In November 1990, the District of Columbia Superior Court sentenced petitioner
3 to fifteen years to life for the May 1990 rape. *See id.* at 3. As a part of the plea agreement for
4 the May 1990 rape, the pending charge for rape while armed for the December 1989 rape was
5 dismissed. *See id.* at 17.

6 Between 2000 and 2010, petitioner had parole hearings before the United States Parole
7 Commission ("Commission") and was denied parole. *See id.* at 14-48. Petitioner then filed a
8 habeas petition under 28 U.S.C. § 2241 before this court, challenging the denials of parole. *See*
9 *Johnson v. Rios*, No. 10-cv-1164, 2011 WL 13143678 (E.D. Cal. Mar. 29, 2011), *aff'd sub*
10 *nom. Johnson v. Clay*, No. 11-17321, 539 F. App'x 748 (9th Cir. 2013). This court denied the
11 petition, reasoning that the Commission "reasonably determined" that petitioner continued to
12 "pose a risk to public safety based on the denial of one of the rapes and minimization of his
13 role in the other rape." *Id.* at *4. Petitioner appealed, and the Ninth Circuit affirmed. *See*
14 *Johnson*, 539 F. App'x at 748. Citing the Supreme Court's decision in *Swarthout v. Cooke*,
15 562 U.S. 216 (2011) (per curiam), the Ninth Circuit reasoned that petitioner's claims "fail[ed]
16 because the D.C. parole regulations d[id] not give rise to a protected liberty interest." *Johnson*,
17 539 F. App'x at 748. Petitioner then had another parole hearing before the Commission in
18 2015, and the Commission again denied parole. *See* ECF No. 14-1 at 54-60.

19 This habeas proceeding arises from petitioner's 2015 parole hearing. As part of the 2015
20 hearing, petitioner had an in-person hearing at his prison. *See id.* at 57-60. Petitioner stated
21 that he had been "insensitive," but he denied having raped the victim in 1990, stating that the
22 victim was a prostitute. *See id.* at 58. The Commission then provided petitioner with a one-
23 page notice of action, informing him that his parole was denied. *See id.* at 60. The notice of
24 action stated:

25 Your Grid Score at your last hearing was 0 point(s). You continue
26 to be scored under the 1987 guidelines of the D.C. Board of Parole.

27 With adjustments reflecting your institutional record since your last
28 hearing, your current Grid Score is 0. You continue to be scored
under the 1987 guidelines of the D.C. Board of Parole. The
guidelines indicate that parole should be granted at this time.

1 However, a departure from the guidelines at this consideration is
2 found warranted because the Commission finds there is a reasonable
3 probability that you would not obey the law if released and your
4 release would endanger the public safety. You are more serious
5 parole risk than shown by your grid score because you committed
6 two rapes in a five month period. You committed one of the attacks
7 while on bond. While increased you have shown no interest to
8 participate in Sex Offender Treatment Program and/or other related
9 programs

10 *Id.* Petitioner then filed the instant habeas petition in September 2016. *See* ECF No. 1.

11 **II. Preliminary matters**

12 The court begins with two preliminary matters. First, petitioner is a state prisoner, even
13 though he had parole hearings before the Commission, a federal authority, and has been held in
14 a federal prison.¹ Petitioner is serving a criminal sentence imposed by the Superior Court of
15 the District of Columbia, so he is a state prisoner for purposes of federal habeas relief. *See*
16 *Champion v. United States*, 947 F. Supp. 2d 84, 87 (D.D.C. 2013) (collecting cases); *Williams*
17 *v. Smith*, No. 08-cv-535, 2008 WL 4057859, at *2 (E.D. Cal. Aug. 28, 2008) (same). A
18 petition under 28 U.S.C. § 2254 is the proper means for a state prisoner to challenge a denial of
19 parole. *See Cooke*, 562 U.S. at 217 (reviewing denial of parole under § 2254); *Roberts v.*
20 *Hartley*, 640 F.3d 1042, 1043 (9th Cir. 2011) (same). Petitioner filed his petition under 28
21 U.S.C. § 2241, rather than § 2254, but the court will not require the parties to brief the merits
22 under § 2254 because the analysis remains the same: under either provision, habeas relief for
23 petitioner is foreclosed by the *Cooke* decision.

24 Second, three days after the court assigned this case to this magistrate judge, petitioner
25 notified the court that his mailing address had changed from USP Atwater to an address at a
26 residential re-entry center administered by the Volunteers of America, an organization that
27 provides sex offender treatment. *See* ECF No. 26. A change of mailing address alone does not
28 show release from custody, and a petitioner's release from custody does not necessarily make a

25 ¹The National Capital Revitalization and Self-Government Improvement Act of 1997
26 transferred various functions of the D.C. government's criminal justice system to federal
27 authorities, including the housing of inmates and conducting parole hearings. *See generally*
28 *Foster v. United States Bureau of Prisons*, 57 F. Supp. 3d 32, 34 (D.D.C. 2014); *Sellmon v.*
Reilly, 551 F. Supp. 2d 66, 68 (D.D.C. 2008); D.C. CODE §§ 24-101, 24-131.

1 habeas petition moot. *See Calderon v. Moore*, 518 U.S. 149, 150 (1996); *Green v. Woodring*,
2 694 F. Supp. 2d 1115, 1121 (C.D. Cal. 2010). Thus, the court will reach the merits.

3 **III. Discussion**

4 Petitioner contends that the Commission erred in seven ways when it denied him parole:

- 5 1. The Commission abused its discretion by finding a reasonable
6 probability that petitioner would disobey the law if he were released on
7 parole.
- 8 2. The Commission abused its discretion by finding that petitioner
9 committed rape in 1989 based on a police report.
- 10 3. The Commission abused its discretion by finding that petitioner had no
11 interest in sex-offender treatment programs when in fact such programs
12 were unavailable to petitioner.
- 13 4. The Commission abused its discretion in finding that petitioner posed a
14 risk of reoffending despite his age, the duration of his incarceration, and
15 his experience of working with female staff members without incident.
- 16 5. The Commission arbitrarily deprived petitioner of a presumptive parole
17 date by failing to provide a rational explanation for departing from the
18 applicable guidelines.
- 19 6. The Commission improperly exercised a judicial function in finding
20 petitioner guilty of the 1989 rape based on a police report.
- 21 7. The Commission erroneously applied a preponderance of the evidence
22 standard to find petitioner guilty of the 1989 rape.

23 ECF No. 1 at 6-12.

24 A state prisoner seeking habeas relief must show violation of federal law, and federal law
25 does not require states to offer parole to their prisoners. *See* 28 U.S.C. §§ 2241(c), § 2254(a);
26 *Cooke*, 562 U.S. at 219. When a state decides to create a liberty interest in parole under its
27 own law, the Due Process Clause requires fair procedures for the vindication of that liberty
28 interest, but “the only federal right at issue is procedural.” *Cooke*, 562 U.S. at 220. Put
another way, the question here is whether petitioner had adequate process during his parole
proceeding, not whether the Commission’s decision is correct. *See id.* at 222.

In *Swarthout v. Cooke*, the Supreme Court explained that the procedures required in the
parole context are “minimal.” *See id.* at 220. In light of the *Cooke* decision, parole procedures
suffice “as long as the state provides an inmate seeking parole with an opportunity to be heard

1 and . . . a statement of the reasons why parole was denied.” *Styre v. Adams*, 645 F.3d 1106,
2 1108 (9th Cir. 2011). The Constitution “does not require more,” and that is “the beginning
3 and the end of the federal habeas courts’ inquiry.” *Cooke*, 562 U.S. at 220.²

4 Here, petitioner had the opportunity to be heard and was provided with the reasons why
5 his parole was denied. Petitioner had an opportunity to present his evidence during his in-
6 person hearing at his prison. *See* ECF No. 14-1 at 57-60. The Commission provided petitioner
7 with a written decision that included the Commission’s reasons for denying him parole. *See id.*
8 at 60. These procedures satisfy the “minimal” threshold.

9 None of petitioner’s arguments show that he had inadequate process before the
10 Commission. Petitioner’s first, third, and fourth claims—erroneously finding that petitioner
11 had a reasonable probability of disobeying the law, posed a risk of reoffending, and had sex-
12 offender treatment programs available to him—pertain to the merits of the Commission’s
13 decision, not the adequacy of process. His second, sixth, and seventh claims—reliance on a
14 police report and applying a preponderance of the evidence standard—are procedural
15 challenges, but they do not establish that petitioner’s parole proceeding lacked the minimal
16 procedures required. The fifth claim—denying parole without a rational explanation—
17 mischaracterizes the record because the Commission provided rational explanations: petitioner
18 raped a woman while he was on bond for being accused of raping another woman.
19 ECF No. 14-1 at 60.³

20 Finally, even if the court were to consider the merits of petitioner’s claims, he cannot
21 prevail. Petitioner does not dispute that he pleaded guilty to raping a woman while he was on

22 ² *See also Cowell v. Salazar*, 437 F. App’x 541 (9th Cir. 2011) (“[Petitioner] contends that
23 *Cooke* does not foreclose habeas relief when the state action is arbitrary and capricious.
24 [Petitioner’s] argument, however, is that the denial of parole was arbitrary and capricious
25 because the Board’s unsuitability findings were belied by the record. *Cooke* forecloses this
court from analyzing the sufficiency of the evidence to support the Board’s decision.”).

26 ³ Throughout his petition and his brief, petitioner relies on the law of the District of Columbia
and argues that the Commission erred under that body of law. *See* ECF No. 1 at 1-12, 94-108.
27 This is yet another basis for denial of the petition. “[F]ederal habeas corpus relief does not lie
28 for errors of state law.” *Cooke*, 562 U.S. at 219.

1 bond. He has also admitted, before his 2015 parole hearing, that he committed rape in 1990.
2 See ECF No. 14-1 at 8, 16. However, the post-hearing assessment of the 2015 parole hearing
3 shows that petitioner denied having committed rape in 1990. See *id* at 58. The denial of the
4 offense and lack of remorse could show a reasonable probability that petitioner would disobey
5 the law, which in turn supports the Commission’s decision to deny parole. See *Bailey v.*
6 *Fulwood*, 793 F.3d 127, 131 (D.C. Cir. 2015).

7 **IV. Certificate of appealability**

8 A petitioner seeking a writ of habeas corpus has no absolute right to appeal a district
9 court’s denial of a petition; he may appeal only in limited circumstances. See 28 U.S.C.
10 § 2253; *Miller-El v. Cockrell*, 537 U.S. 322, 335-36 (2003). Rule 11 Governing Section 2254
11 Cases requires a district court to issue or deny a certificate of appealability when entering a
12 final order adverse to a petitioner. See also Ninth Circuit Rule 22-1(a); *United States v. Asrar*,
13 116 F.3d 1268, 1270 (9th Cir. 1997). A certificate of appealability will not issue unless a
14 petitioner makes “a substantial showing of the denial of a constitutional right.” 28 U.S.C.
15 § 2253(c)(2). This standard requires the petitioner to show that “jurists of reason could
16 disagree with the district court’s resolution of his constitutional claims or that jurists could
17 conclude the issues presented are adequate to deserve encouragement to proceed further.”
18 *Miller-El*, 537 U.S. at 327; accord *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

19 Here, petitioner has not made a substantial showing of the denial of a constitutional right.
20 Thus, the court declines to issue a certificate of appealability.

21 **V. Order**

- 22 1. Petitioner Michael Roy Johnson’s petition for a writ of habeas corpus, ECF No. 1,
23 is denied.
 - 24 2. The court declines to issue a certificate of appealability.
 - 25 3. The clerk of court is directed to enter judgment in favor of respondent Andre
26 Matevousian and close the case.
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IT IS SO ORDERED.

Dated: November 29, 2018


UNITED STATES MAGISTRATE JUDGE