

1 At the hearing on November 16, 2005, the BPT concluded that
2 Petitioner was unsuitable for parole based on a finding that he
3 would pose an unreasonable risk of danger to society and be a
4 threat to public safety if released from prison. (ECF No. 1 at
5 105). The BPT expressed specific concern about Petitioner's lack
6 of stable plans for the future.

7 The order regarding Petitioner's Writ of Habeas Corpus from
8 the Superior Court of California for the County of Los Angeles
9 reflects the facts underlying the commitment offense, which are as
10 follows:

11 The record reflects that on July 20, 1986, a group of
12 young men were playing a radio in a loud manner outside
13 of petitioner's apartment. When the young men would not
14 respond to repeated requests to turn the volume down,
15 petitioner's wife fired several shots into the air.
16 Later, petitioner fired several shots into a crowd,
17 striking one man in the foot. An altercation between
18 this man and petitioner ensued and petitioner fired
19 another shot, which hit the victim in the back and
20 caused his death.

21 (ECF No. 1 at 105).

22 Petitioner does not challenge his conviction and sentence in
23 these proceedings.

24 **ISSUES RAISED/DEFENSES**

25 Petitioner challenges the BPT's determination that he was
26 unsuitable for parole. The allegation in support of his habeas
27 corpus petition are as follows:

28 1. The BPT's November 16, 2005, decision violated his right to due
process under the Fifth and Fourteenth Amendments to the United
States Constitution because the decision was not supported by any
evidence in the record based on relevant factors prescribed by

1 California Penal Code § 3041 or the Board's regulations. (ECF No.
2 1 at 5).

3 **STANDARD OF REVIEW**

4 Under 28 U.S.C. § 2254, it is necessary that the Petitioner
5 has exhausted state remedies before seeking federal habeas corpus
6 review. The Antiterrorism and Effective Death Penalty Act of 1996,
7 ("AEDPA"), worked substantial changes to the law of habeas corpus
8 establishing more deferential standards of review to be used by a
9 federal habeas court in assessing a state court's adjudication of
10 a criminal defendant's claims of constitutional error. *Moore v.*
11 *Calderon*, 108 F.3d 261, 263 (9th Cir. 1997). In addition, under
12 the AEDPA, a federal writ may issue, "only when a state court
13 decision was contrary to, or involved unreasonable application of
14 an authoritative decision of the United States Supreme Court." 28
15 U.S.C. § 2254(d) (West 2011); *Moore*, 108 F.3d 261 (9th Cir. 1997).

16 In the case at hand, Petitioner did exhaust all state
17 remedies. The Superior Court of the State of California for the
18 County of Los Angeles denied Petitioner's habeas corpus petition
19 on August 8, 2006. (ECF No. 1 at 106). Subsequently, the Court of
20 Appeals of the State of California, Second Appellate District,
21 Division III denied the petition on October 3, 2006. (ECF No. 1 at
22 108). The California State Supreme Court denied the petition on
23 December 13, 2006. (ECF No. 1 at 110). The Eastern District of
24 California granted review of Petitioner's habeas corpus petition
25 on February 12, 2007. (ECF No. 9).

26 The last filing in this case was on September 7, 2010. (ECF
27 No. 17). Since then, the United States Supreme Court has rendered
28 an opinion that overrules numerous cases that both parties have

1 relied on throughout the history of the case. In addition, the
2 recent decision of the United States Supreme Court decided is on
3 all fours with the case before the District Court presently and
4 makes the issue at hand moot.

5 **DISCUSSION**

6 Petitioner's basis for federal relief is an alleged violation
7 of his constitutionally protected right to due process of law. The
8 relevant California Penal Code regarding the parole process
9 provides:

10 (b) The panel or the board, sitting en banc, shall set a
11 release date unless it determines that the gravity of
12 the current convicted offense or offenses, or the timing
13 and gravity of current or past convicted offense or
14 offenses, is such that consideration of the public
safety requires a more lengthy period of incarceration
for this individual, and that a parole date, therefore,
cannot be fixed at this meeting.

15 Cal. Penal Code § 3041(b) (West Ann. 2011).

16 Not every state's parole procedures create a protected right,
17 but rather, certain state statutes give rise to a constitutionally
18 protected liberty interest in parole. Whether a particular state
19 statute gives rise to a protected right requires a factual
20 analysis. See *Greenholtz v. Inmates of the Nebraska Penal and*
21 *Correctional Complex*, 442 U.S. 1, 99 S.Ct. 2100, 60 L.Ed. 2d 668
22 (1979). Additionally, the California State Supreme Court has held
23 that when a court reviews a parole decision of the BPT or the
24 Governor, the relevant inquiry is whether some evidence supports
25 the decision, thus creating the "some evidence" standard of
26 review. See *In re Lawrence*, 44 Cal. 4th 1181 (2008). After the
27 Ninth Circuit analyzed the California statute, it held that
28 California's statute does create a liberty interest protected by

1 the Due Process Clause of the United States Constitution. See
2 Roberts v. Hartley, 640 F.3d 1042, 1045, No. 10-15760 (9th Cir.
3 2011). However, when the issue is a state created liberty
4 interest, the federally protected aspect is that the liberty
5 interest "requires fair procedures for its vindication-and federal
6 courts will review the application of those constitutionally
7 required procedures." Swarthout v. Cooke, ---U.S.---, 131 S.Ct.
8 859, 861-62, 178 L.Ed. 2d 732 (2011) (per curiam). The United
9 States Supreme Court articulates that in the context of parole,
10 the procedures required to ensure the standards of the
11 Constitution are met are "minimal." Id., ---U.S.---, 131 S.Ct. at
12 862, 178 L.Ed. 2d 732. Those "minimal" requirements are that the
13 inmate has an opportunity to be heard, receives information
14 regarding in what respects he falls short of qualifying for parole
15 because the Constitution does not require more. Greenholtz, 442
16 U.S. at 16, 99 S.Ct. at 2108, 60 L.Ed. 2d 668.

17 The United States Supreme Court clearly states that, "no
18 decision of ours supports converting California's "some evidence"
19 rule into a substantive federal requirement." Swarthout, ---U.S.--
20 -, 131 S.Ct. at 862, 178 L.Ed. 2d 732. In the same way, "a state's
21 misapplication of its own laws does not provide a basis for
22 granting a federal writ of habeas corpus." Roberts, 640 F.3d at
23 1046, No. 10-15760 (9th Cir. 2011) referencing 28 U.S.C. § 2254(a)
24 (West 2011). Furthermore, "the short of the matter is that the
25 responsibility for assuring that the constitutionally adequate
26 procedures governing California's parole system are properly
27 applied rests with California courts, and is no part of the Ninth
28 Circuit's business." Swarthout, ---U.S.---, 131 S.Ct. at 863, 178

1 L.Ed. 2d 732. Consequently, "when the only federal issue is
2 procedural, the relevant inquiry is what process the inmate
3 received, not whether the state court decided the case correctly."
4 Id., ---U.S.---, 131 S.Ct. at 862, 178 L.Ed. 2d 732. The Ninth
5 Circuit has acknowledged that, "prior Ninth Circuit precedent
6 required review of the propriety of a California state court's
7 'some evidence' determination, but Swarthout v. Cooke overruled
8 that precedent." Roberts, 640 F.3d at 1046, No. 10-15760 (9th Cir.
9 2011) citing Pearson v. Muntz, 625 F.3d at 550[sic] 639 F.3d 1185;
10 Swarthout, ---U.S.---, 131 S.Ct. at 862, 178 L.Ed. 2d 732.

11 The Ninth Circuit reiterated that, "if an inmate seeking
12 parole receives an opportunity to be heard, notification of the
13 reasons as to denial of parole, and access to their records in
14 advance," and where the inmate does not question whether those
15 procedures were followed, "the inquiry is at its end." Pearson v.
16 Muntz, 639 F.3d 1185, 1191, 11 Cal. Daily Op. Serv. 4058, 2011
17 Daily Journal D.A.R. 4928 (9th Cir. 2011).

18 In the case at hand, Petitioner Williams argues that the
19 BPT's November 16, 2005, decision violated his right to due
20 process under the Fifth and Fourteenth Amendments because it was
21 not supported by any evidence in the record based on relevant
22 factors prescribed by California Penal Code § 3041 or the Board's
23 regulations. (ECF No. 1 at 5). But the Petitioner does not allege
24 that certain procedures were not followed. In fact, the process
25 afforded to Petitioner included an opportunity to be heard (ECF
26 No. 5-1 at 9). As well, he was provided with a statement of the
27 reasons why he was denied parole. (ECF No. 5-1 at 71). The United
28 States Supreme Court has held that a prisoner's right to due

1 process is not violated when the prisoner is allowed an
2 opportunity to be heard and provided with a statement of the
3 reasons why parole is denied. See Swarthout, ---U.S.---, 131 S.Ct.
4 859, 178 L.Ed. 2d 732; Greenholtz, 442 U.S. 1, 99 S.Ct. 2100, 60
5 L.Ed. 2d 668.

6 Therefore, Petitioner's Fifth and Fourteenth Amendment rights
7 were not violated because he had the opportunity to be heard and
8 was provided with a statement of why parole was denied. Moreover,
9 Petitioner's only ground for a federal writ is procedural, and
10 thus, the Ninth Circuit's inquiry "is at its end." See Pearson,
11 639 F.3d 1185, 11 Cal. Daily Op. Serv. 4058, 2011 Daily Journal
12 D.A.R. 4928 (9th Cir. 2011).

13 **IT IS RECOMMENDED**, for the reasons stated, that the Petition
14 be **DENIED**.

15 **OBJECTIONS**

16 Any party may object to the magistrate judge's proposed
17 findings, recommendations or report within fourteen (14) days
18 following service with a copy thereof. Such party shall file with
19 the Clerk of the Court all written objections, specifically
20 identifying the portions to which objection is being made, and the
21 basis therefor. Attention is directed to Fed. R. Civ. P. 6(e),
22 which adds another three (3) days from the date of mailing if
23 service is by mail. A district judge will make a de novo
24 determination of those portions to which objection is made and
25 may accept, reject, or modify the magistrate judge's
26 determination. The district judge need not conduct a new hearing
27 or hear arguments and may consider the magistrate judge's record
28 and make an independent determination thereon. The district judge

1 may also receive further evidence or recommit the matter to the
2 magistrate judge with instructions. See 28 U.S.C. § 636 (b)(1)(C)
3 and Fed. R. Civ. P. 73. A magistrate judge's recommendation cannot
4 be appealed to a court of appeals; only the district judge's order
5 or judgment can be appealed.

6 The District Court Executive **SHALL FILE** this report and
7 recommendation and serve copies of it on the referring judge and
8 the parties.

9 **DATED** this 12 day of July, 2011.

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11
12 s/James P. Hutton
13 JAMES P. HUTTON
14 UNITED STATES MAGISTRATE JUDGE
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