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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

WILLIAM ROBERT HAYES,

No. CIV S-07-1106-GEB-CMK-P

Petitioner,

vs.

FINDINGS AND RECOMMENDATIONS

D.K. SISTO, et al.,

Respondents.

_____ /

Petitioner, a state prisoner proceeding with appointed counsel, brings this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 challenging the denial of parole.

Pending before the court are Petitioner’s petition for a writ of habeas corpus (Doc. 1), Respondent’s response (Doc. 6), and Petitioner’s traverse (Doc. 7). In addition, pursuant to court order, the parties filed supplemental briefs (Docs. 15, 16, 17, and 18).

In his petition, petitioner is challenging the Governor’s 2005 decision to reverse the Board of Prison Terms (Board) 2004 decision to grant him parole. Petitioner challenges the decision as a violation of due process and equal protection.

The issue of parole denials in California has recently been addressed by the United States Supreme Court. Reversing the Ninth Circuit’s decision in Hayward v. Marshall,

1 603 F.3d 546 (9th Cir. 2010) (en banc), the Court observed:

2 Whatever liberty interest exists [in parole] is, of course, a *state*
3 interest. There is no right under the Federal Constitution to be
4 conditionally released [on parole] before the expiration of a valid sentence,
5 and the States are under no duty to offer parole to their prisoners. *Id.* at 7.
6 When, however, a State creates a liberty interest, the Due Process Clause
7 requires fair procedures for its vindication – and federal courts will review
8 the application of those constitutionally required procedures. . . .

9 Swarthout v. Cooke, 562 U.S. ___, __ S. Ct. __, 2011 WL 197627, at *2 (January 24, 2011) (per
10 curiam) (citing Greenholtz v. Inmates of Neb. Penal and Correctional Complex, 442 U.S. 1, 7
11 (1979)) (emphasis in original).

12 The Court held:

13 In the context of parole, we have held that the procedures required
14 are minimal. In Greenholtz, we found that a prisoner subject to a
15 parole statute similar to California’s received adequate process
16 when he was allowed an opportunity to be heard and was provided
17 a statement of the reasons why parole was denied. 442 U.S. at 16.
18 “The Constitution,” we held, “does not require more.” *Ibid.*
19 Cooke and Clay received at least this amount of process: They
20 were allowed to speak at their parole hearings and to contest the
21 evidence against them, were afforded access to their records in
22 advance, and were notified as to the reasons why parole was
23 denied. (citations omitted).

24 That should have been the beginning and the end of the federal
25 habeas courts’ inquiry into whether Cook and Clay received due
26 process. . . .

27 *Id.* at *2-3.

28 The Court added that “[n]o opinion of ours supports converting California’s
29 ‘some evidence’ rule into a substantive federal requirement” and “. . . it is no federal concern . . .
30 whether California’s ‘some evidence’ rule of judicial review (a procedure beyond what the
31 Constitution demands) was correctly applied” because “a ‘mere error of state law’ is not a denial
32 of due process.” *Id.* at *3 (citing Engle v. Isaac, 456 U.S. 107, 121, n.21 (1982)). Thus, in cases
33 challenging the denial of parole, the only issue subject to federal habeas review is whether the
34 inmate received the procedural due process protections of notice and an opportunity to be heard.
35 There is no other clearly established federal constitutional right in the context of parole.

36 ///

1 Here, to the extent petitioner claims that the Governor's decision reversing the
2 grant of parole was not based on "some evidence," was issued without individualized
3 consideration, or otherwise failed to satisfy substantive due process, the claim is foreclosed as a
4 matter of law because there is no clearly established federal constitutional substantive due
5 process right in parole.

6 Petitioner does not argue that he was denied any of the procedural protections
7 required by the federal constitution. Even if he did, the record clearly establishes that petitioner
8 was provided with the basic Greenholtz protections of notice, an opportunity to be heard, and a
9 statement of reasons for the decision. See Swarthout, 2011 WL 167627. Because the federal
10 constitution requires nothing more in the parole context, the petition must be denied.

11 Based on the foregoing, the undersigned recommends that petitioner's petition for
12 a writ of habeas corpus (Doc. 1) be denied.

13 These findings and recommendations are submitted to the United States District
14 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days
15 after being served with these findings and recommendations, any party may file written
16 objections with the court. Responses to objections shall be filed within 14 days after service of
17 objections. Failure to file objections within the specified time may waive the right to appeal.
18 See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

19
20 DATED: January 26, 2011

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22 **CRAIG M. KELLISON**
23 UNITED STATES MAGISTRATE JUDGE