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

RON HICKS,

Petitioner,

No. CIV S-07-1108 GEB CHS P

vs.

M.C. KRAMER, Warden, et al.,

Respondents.

FINDINGS AND RECOMMENDATIONS

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I. INTRODUCTION

Petitioner Ron Hicks is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. §2254. Petitioner is currently serving an indeterminate sentence of fifteen years to life following his 1981 conviction in Los Angeles County for second degree murder. The pending petition challenges the execution of that sentence, and specifically, the October 20, 2005 decision of the Board of Parole Hearings finding petitioner to be unsuitable for parole.

II. BACKGROUND

As set forth in the transcript of the October 20, 2005 parole suitability hearing (“BPHT”), petitioner committed his life offense after a drug deal went awry. Petitioner stated that he intended to purchase drugs from the victim. He realized that the drugs were “bad” and



1 This petition for writ of habeas corpus was filed after the effective date of, and thus is subject to,  
2 the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”). *Lindh v. Murphy*, 521  
3 U.S. 320, 326 (1997); *see also Weaver v. Thompson*, 197 F.3d 359 (9th Cir. 1999). Under  
4 AEDPA, federal habeas corpus relief also is not available for any claim decided on the merits in  
5 state court proceedings unless the state court’s adjudication of the claim:

6 (1) resulted in a decision that was contrary to, or involved an  
7 unreasonable application of, clearly established Federal law, as  
determined by the Supreme Court of the United States; or

8 (2) resulted in a decision that was based on an unreasonable  
9 determination of the facts in light of the evidence presented in the  
State court proceeding.

10 28 U.S.C. § 2254(d); *see also Penry v. Johnson*, 532 U.S. 782, 792-93 (2001); *Williams v.*  
11 *Taylor*, 529 U.S. 362, 402-03 (2000); *Lockhart v. Terhune*, 250 F.3d 1223, 1229 (9th Cir. 2001).

12 The court will look to the last reasoned state court decision in determining whether the law  
13 applied to a particular claim by the state courts was contrary to the law set forth in the cases of  
14 the United States Supreme Court or whether an unreasonable application of such law has  
15 occurred. *Avila v. Galaza*, 297 F.3d 911, 918 (9th Cir. 2002), *cert. dismissed*, 538 U.S. 919  
16 (2003).

## 17 V. DISCUSSION

18 The Due Process Clause of the Fourteenth Amendment prohibits state action that  
19 deprives a person of life, liberty, or property without due process of law. A person alleging a due  
20 process violation must first demonstrate that he or she was deprived of a protected liberty or  
21 property interest, and then show that the procedures attendant upon the deprivation were not  
22 constitutionally sufficient. *Kentucky Dep’t. of Corrections v. Thompson*, 490 U.S. 454, 459-60  
23 (1989); *McQuillion v. Duncan*, 306 F.3d 895, 900 (9th Cir. 2002).

24 A protected liberty interest may arise from either the Due Process Clause itself or  
25 from state laws. *Board of Pardons v. Allen*, 482 U.S. 369, 373 (1987). The United States  
26 Constitution does not, in and of itself, create a protected liberty interest in the receipt of a parole

1 date. *Jago v. Van Curen*, 454 U.S. 14, 17-21 (1981). However, if a state’s statutory parole  
2 scheme uses mandatory language, it “creates a presumption that parole release will be granted”  
3 when or unless certain designated findings are made, thereby giving rise to a constitutional  
4 liberty interest. *McQuillion*, 306 F.3d at 901 (quoting *Greenholtz v. Inmates of Nebraska Penal*,  
5 442 U.S. 1, 12 (1979)). The Ninth Circuit has conclusively determined that California state  
6 prisoners who have been sentenced to prison with the possibility of parole have a clearly  
7 established, constitutionally protected liberty interest in receipt of a parole release date. *Irons v.*  
8 *Carey*, 505 F.3d 846, 850-51 (9th Cir. 2007) (citing *Sass v. Cal. Bd. of Prison Terms*, 461 F.3d  
9 1123, 1128 (9th Cir. 2006)); *Biggs v. Terhune*, 334 F.3d 910, 914 (9th Cir. 2003); *McQuillion*,  
10 306 F.3d at 903; and *Allen*, 482 U.S. at 377-78 (quoting *Greenholtz*, 442 U.S. at 12)).

11           The full panoply of rights afforded a defendant in a criminal proceeding is not  
12 constitutionally mandated in the context of a parole proceeding. See *Pedro v. Or. Parole Bd.*,  
13 825 F.2d 1396, 1398-99 (9th Cir. 1987). The Supreme Court has held that a parole board’s  
14 procedures are constitutionally adequate if the inmate is given an opportunity to be heard and a  
15 decision informing him of the reasons he did not qualify for parole. *Greenholtz*, 442 U.S. at 16.  
16 In addition, the Ninth Circuit has conclusively determined that Supreme Court law clearly  
17 establishes that “some evidence” must support a parole decision. *Sass*, 461 F.3d at 1128-29;  
18 *McQuillion*, 306 F.3d at 904.

19           Under the some evidence standard, a decision cannot be “without support” or  
20 “arbitrary.” *McQuillion*, 306 F.3d at 904 (citing *Superintendent v. Hill*, 472 U.S. 445, 457  
21 (1985)); *Biggs*, 334 F.3d at 915. It must have some indicia of reliability. *Id.* The standard is  
22 “minimally stringent,” and a decision must be upheld if there is any evidence in the record that  
23 could support the conclusion reached. *Powell v. Gomez*, 33 F.3d at 40 (citing *Cato v. Rushen*,  
24 824 F.2d 703, 705 (9th Cir. 1987)); *Toussaint v. McCarthy*, 801 F.2d 1080, 1105 (9th Cir. 1986).  
25 Examination of the entire record is not required. *Id.* The Supreme Court has specifically  
26 directed reviewing courts not to assess the credibility of witnesses or re-weigh the evidence.

1 *Hill*, 472 U.S. at 455. The only relevant question is whether there is *any* reliable evidence in the  
2 record that could support the decision reached. *See Id.*; *Toussaint*, 801 F.2d at 1105.

3 In evaluating whether some evidence supported the Board’s decision, the analysis  
4 “is framed by the statutes and regulations governing parole suitability determinations in the  
5 relevant state.” *Irons*, 505 F.3d at 851. Thus, the court is bound by California’s construction of  
6 its own parole suitability laws. *See Bradshaw v. Richey*, 546 U.S. 74, 76 (2005). The court  
7 “must look to California law to determine the findings that are necessary to deem [a petitioner]  
8 unsuitable for parole, and then must review the record to determine whether the state court  
9 decision holding that these findings were supported by ‘some evidence’ [ ] constituted an  
10 unreasonable application of the ‘some evidence’ principle.” *Irons*, 505 F.3d at 851.

11 Title 15, Section 2402 of the California Code of Regulations sets forth various  
12 factors to be considered by the Board in its parole suitability findings for murderers. The  
13 regulation is designed to guide the Board’s assessment of whether the inmate poses “an  
14 unreasonable risk of danger to society if released from prison,” and thus whether he or she is  
15 suitable for parole. *In re Lawrence*, 44 Cal.4th 1181, 1214, 1202 (2008). The Board is directed  
16 to consider all relevant, reliable information available regarding

17 the circumstances of the prisoner’s social history; past and present  
18 mental state; past criminal history, including involvement in other  
19 criminal misconduct which is reliably documented; the base and  
20 other commitment offenses, including behavior before, during and  
21 after the crime; past and present attitude toward the crime; any  
conditions of treatment or control, including the use of special  
conditions under which the prisoner may safely be released to the  
community; and any other information which bears on the  
prisoner’s suitability for release.

22 15 Cal. Code Regs. § 2402(b). The regulation also lists several specific circumstances which  
23 tend to show suitability or unsuitability for parole. 15 Cal. Code Regs. § 2402(c)-(d). The  
24 overriding concern is public safety and the focus is on the inmate’s *current* dangerousness. *In re*  
25 *Lawrence*, 44 Cal. 4th at 1205. Thus, the proper articulation of the standard of review is not  
26 whether some evidence supports the reasons cited for denying parole, but whether some evidence

1 indicates that a parolee's release would unreasonably endanger public safety. *In re Shaputis*, 44  
2 Cal.4th 1241, 1254 (2008). In other words, there must be some rational nexus between the facts  
3 relied upon and the ultimate conclusion that the prisoner continues to be a threat to public safety.  
4 *In re Lawrence*, 44 Cal. 4th at 1227.

5 In this case, the panel commended petitioner for many of his accomplishments:

6 Mr. Hicks, I will compliment you. You've kept yourself  
7 disciplinary-free since that stimulants, sedatives deal in 1990, and  
8 that may have been nothing more than you just passing a box along  
9 unbeknownst, but it does stand on the record. You have kept  
10 yourself clean since then. You have completed three FEMA  
11 courses since your last hearing, and that is commendable. You  
12 have sustained yourself throughout your incarceration in NA, and  
13 particularly of note, since '01, every consecutive year, you have  
14 been involved religiously in NA addressing that issue. You have  
15 excellent work reports. You're grounds keeper and yard crew over  
16 a period of time, and I would compliment you for the number of  
17 chronos that you've gotten, positive chronos from institutional staff  
18 that deals with you daily and probably are the best assessors of how  
19 you're comporting yourself within the institution. You know, that  
20 is excellent and way above the norm. In addition, you have been  
21 quite inventive with coming up with a pencil holder, a toy box with  
22 the child-safe opening top, and a cat potty that's quite inventive.  
23 We've enjoyed looking at those things of accomplishment.

24 (BPHT at 114-116.) Ultimately, however, the panel determined that petitioner's inadequate  
25 parole plans and other negative factors for his release outweighed the positive factors. The panel  
26 stated that it had relied on the following circumstances in concluding that petitioner was not  
suitable for parole and would still pose an unreasonable risk of danger to society if released under  
the current conditions:

The offense was carried out, in this regard, in a very cruel and  
callous manner. Specifically, the victim was struck multiple times  
with blows to the head and a stab wound to his chest which  
ultimately led to his death. The offense was carried out in a  
manner which demonstrates a callous disregard for the  
consequences in a drug transaction that went bad. The murder of  
the victim -- let's go back to the drug transaction issue. The drug  
transaction was bad. The motive for the crime was trivial in  
relation to the offense in that during an illegal drug and heroin sale,  
there was a death of one of the parties, that being the person selling  
the drugs, and that Inmate Hicks discovered that the drugs that he  
had planned to purchase from the victim were in fact bad, and in

1 trying to get his money back ended up in a struggle with the victim  
2 which ultimately led to the death of the victim by stab wound and  
3 multiple blows to the head with a buck knife. The murder of the  
4 victim did not deter the prisoner from later committing a criminal  
5 offense; specifically, and that after he knew of the victim's death,  
6 he fled to Hawaii. He then was returned to California and booked  
7 in jail, and then fled to Texas as a fugitive. The prisoner has in  
8 many ways failed to profit from society's previous attempts to  
9 correct his criminality. In this regard, such attempts have been  
10 adult probation, county jail time, prior prison terms on more than  
11 one occasion, and various elements of parole some of which have  
12 [gone bad]. He had an unstable social history. He started using  
13 alcohol at a very early age, use of drugs such as marijuana, heroin,  
14 PCP, and LSD. He's had two failed marriages, produced one  
15 daughter, which the inmate has no contact. His criminal history  
16 officially began on 12/11/1971, and continued to his commitment  
17 which began on 11/11/1981, which included such crimes as  
18 reckless driving, assault on a police officer, possession of  
19 marijuana for sale, again, possession of marijuana for sale,  
20 burglary, receiving stolen property, further marijuana, possession  
21 of marijuana, under the influence of drugs, possession of drug  
22 paraphernalia, assault with a deadly weapon, and escape from  
23 jurisdiction which includes the then aforementioned escape from  
24 the Los Angeles County Jail and his eventual fleeing to Texas  
25 where he was then returned to Los Angeles. The prisoner has  
26 programmed well while incarcerated, developed marketable skills  
that hopefully can be put to use upon release. He has failed to  
upgrade himself educationally and has only one vocation, that  
being silk screening in his 22 years of being in prison. He has  
participated in beneficial self-help programs and self-improvement  
programs. In this regard, it is improving his artistic ability over the  
years while in prison. He has never had a 128 chrono, which is  
remarkable. He's only had two 115 disciplinary reports, the last  
one being on 8/14 of 1990, and that was for holding of stimulants,  
sedatives and the trafficking in narcotics. That of course, is a  
troubling 115, but that in fact was approximately 15 years ago.  
The psychological report dated 10/9 of 2002, by C. Giantonio,  
PhD, was favorable... His parole plans, he appears to have viable  
residential plans. He does not have viable or acceptable parole  
plans. He does have a marketing skill. In regard to the  
employment plans, this Panel is concerned that with all his  
accomplishments, Mr. Hicks has failed to develop consistent  
parole plans. While he has offers of residential support in his most  
recent support letters, they do appear to differ from the plan that  
was stated in the Board report. Additionally, he has stated he has,  
his stated job plan in the Board report appears to be no longer  
available and substituted by a note from a former inmate who is  
planning to start a business but provides no particular detail or  
substance to his offer. We believe that because of Mr. Hicks'  
former problems in crime, alcohol, and drugs it is absolutely  
necessary that he has a firm parole plan that includes a stable and

1           verifiable opportunity for employment, so he'll not find [the need  
2           to] return to criminality.

3 (BPHT at 108-114.)

4           Despite petitioner's argument to the contrary, there is some evidence to support  
5 the Board's conclusion in this regard. Petitioner's conduct in prison had been exemplary,  
6 however, his life crime was not an isolated incident. Petitioner amassed an extensive criminal  
7 record in the ten years prior to his incarceration for the instant offense and he attributes much of  
8 his criminal behavior to past drug and alcohol abuse. Given petitioner's extensive criminal  
9 record and serious history of substance abuse problems, it was reasonable for the Board to  
10 require him to present a stable, consistent, and verifiable plan for his parole, including residential  
11 and employment plans, in order for him to be found suitable.

12           Instead, the Board found that petitioner's plans as set forth in the Board report  
13 were not consistent with what he presented at the hearing. Petitioner had indicated that he would  
14 reside with his brother in Chino Hills, and that he would be employed with the Darby  
15 Construction Company in Covina, California. (BPHT at 41.) At the hearing, however, he stated  
16 that his employment plans had changed and that he would be working for a different company in  
17 Riverside. (BPHT at 42.) Petitioner offered a letter of support from a friend and former inmate,  
18 who wrote of an opportunity for petitioner with his silk screening venture. (BPHT at 44.) The  
19 letter did not specify, nor was petitioner aware, what the opportunity was or what pay or benefits  
20 might be available. (BPHT at 46.) Petitioner further indicated at the hearing that he had also  
21 changed his residence plans since submitting the Board report and that he now planned to reside  
22 with his mother instead of his brother. (BPHT at 102.) The Board concluded that petitioner had  
23 failed to develop solid and consistent plans for his parole.

24           A prisoner's understanding and plans for the future comprise one factor tending to  
25 indicate suitability for parole, at least where the prisoner "has made realistic plans for release or  
26 has developed marketable skills that can be put to use upon release." *See* Cal. Code Regs.





