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

PETER GOODRIDGE,

Petitioner,

No. 2: 07-cv-2650 LKK KJN P

vs.

RICHARD SUBIAS,

Respondent.

ORDER

_____/

Petitioner, a state prisoner proceeding pro se, brought a petition for writ of habeas corpus challenging the California Board of Parole Hearings' decision that petitioner was unsuitable for parole. On June 20, 2010, this court dismissed the petition as barred by the statute of limitations imposed by the Antiterrorism and Effective Death Penalty Act, 28 U.S.C. § 2244(d)(1).

Petitioner has filed a timely appeal of his application for a writ of habeas corpus. Before petitioner can appeal this decision, a certificate of appealability must issue. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

A certificate of appealability may issue under 28 U.S.C. § 2253 "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The certificate of appealability must "indicate which specific issue or issues satisfy" the requirement. 28 U.S.C. § 2253(c)(3).

1 The Supreme Court has adopted:

2 a two-step analysis for deciding whether to grant a COA when a
3 district court "denies a habeas petition on procedural grounds
4 without reaching the prisoner's underlying constitutional claim."
5 [Slack v. McDaniel, 529 U.S. 473, 484 (2000).] In those
6 circumstances, a [certificate of appealability] should issue if the
7 prisoner can show: (1) "that jurists of reason would find it
8 debatable whether the district court was correct in its procedural
9 ruling"; and (2) "that jurists of reason would find it debatable
10 whether the petition states a valid claim of the denial of a
11 constitutional right." [Id.]

12 Morris v. Woodford, 229 F.3d 775, 780 (9th Cir. 2000).


13 In the context of a federal habeas corpus motion brought under 28 U.S.C. § 2254, the
14 Supreme Court has indicated that the statute of limitations is procedural. Daniels v. United
15 States, 532 U.S. 374, 381 (2001) ("Procedural barriers, such as statutes of limitations and rules
16 concerning procedural default and exhaustion of remedies, operate to limit access to review on
17 the merits of a constitutional claim."), but see Ellingson v. Burlington Northern, Inc., 653 F.2d
18 1327, 1331 n.3 (9th Cir. 1981), superceded on other grounds as stated in PAE Gov't Servs. v.
19 MPRI, Inc., 514 F.3d 856, 859 n.3 (9th Cir. 2007) ("A judgment based on the statute of
20 limitations is 'on the merits'" for purposes of res judicata). Accordingly, it appears that this
21 court must analyze both whether jurists of reason could disagree with this court's ruling on the
22 statute of limitations question and the underlying merits of the petition.

23 On the first issue, the court concludes that jurists of reason could disagree. On the
24 second, the court is "simply [to] take a quick look at the face of the [petition] to determine
25 whether the petitioner has facially alleged the denial of a constitutional right." Morris, 229 F.3d
26 at 781 (quoting Lambright v. Stewart, 220 F.3d 1022, 1026 (9th Cir. 2000)). Reviewing the
petition at issue under this standard, petitioner has facially alleged that the Board of Parole
Hearings violated his rights under the Due Process Clause by finding him unsuitable for parole in
2005 without "some evidence" to support this finding. See Hayward v. Marshall, 603 F.3d 546,
562-63 (9th Cir. 2010)

1 Accordingly, IT IS HEREBY ORDERED that a certificate of appealability issue as to the
2 above issues.

3 IT IS SO ORDERED.

4 DATED: July 13, 2010.

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7 
8 LAWRENCE K. KARLTON
9 SENIOR JUDGE
10 UNITED STATES DISTRICT COURT