

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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

AHMAD PHILLIPS,

Petitioner,

No. CIV S-08-0654 MCE GGH P

vs.

D. K. SISTO,

Respondent.

ORDER

_____ /

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner asserts two claims with regard to the California Board of Parole Hearings (BPH)’s finding on March 14, 2006 that he was unsuitable for parole: (1) that the BPH’s denial of parole violated petitioner’s plea agreement, in which petitioner agreed to a sentence of 15 years to life but was allegedly informed by the trial court that “he would spend ten years in prison and be parole [sic] at age 27” (Petition at 8); and (2) the BPH’s decision was not supported by “some evidence.”

On January 24, 2011, the United States Supreme Court in a per curiam decision found that the Ninth Circuit erred in commanding a federal review of the state’s application of state law in applying the “some evidence” standard in the parole eligibility habeas context. Swarthout v. Cooke, 502 U.S. ___, ___ S. Ct. ___, 2011 WL 197627 *2 (Jan. 24, 2011).

1 Quoting, inter alia, Estelle v. McGuire, 502 U.S. 62, 67 (1991), the Supreme Court re-affirmed
2 that “federal habeas corpus relief does not lie for errors of state law.” Id. While the high court
3 found that the Ninth Circuit’s holding that California law does create a liberty interest in parole
4 was “a reasonable application of our cases” (while explicitly not reviewing that holding), the
5 Supreme Court stated:

6 When, however, a State creates a liberty interest, the Due Process
7 Clause requires fair procedures for its vindication-and federal
8 courts will review the application of those constitutionally required
9 procedures. In the context of parole, we have held that the
10 procedures required are minimal.

11 Swarthout v. Cooke, at *2.

12 Citing Greenholtz,¹ the Supreme Court noted it had found under another state’s
13 similar parole statute that a prisoner had “received adequate process” when “allowed an
14 opportunity to be heard” and “provided a statement of the reasons why parole was denied.”
15 Swarthout, at *2. Noting their holding therein that “[t]he Constitution [] does not require more,”
16 the justices in the instances before them, found the prisoners had “received at least this amount of
17 process: They were allowed to speak at their parole hearings and to contest the evidence against
18 them, were afforded access to their records in advance, and were notified as to the reasons why
19 parole was denied.” Id.

20 The Supreme Court was emphatic in asserting “[t]hat should have been the
21 beginning and the end of the federal habeas courts’ inquiry....” Swarthout, at *3. “It will not do
22 to pronounce California’s ‘some evidence’ rule to be ‘a component’ of the liberty interest....” Id.
23 “No opinion of ours supports converting California’s “some evidence” rule into a substantive
24 federal requirement.” Id. Thus, it appears there is no federal due process requirement for a
25 “some evidence” review and it also appears that federal courts are precluded from review of the
26 state court’s application of its “some evidence” standard.

¹ Greenholtz v. Inmates of Neb. Penal and Correctional Complex, 442 U.S. 1, 16 (1979).

1 The parties have twenty-one days to provide simultaneous supplemental briefing,
2 in light of the very recent decision noted above, demonstrating why Claim (2) in the instant
3 petition should not be dismissed. The court will not look with favor upon requests for extensions
4 of time.

5 IT IS SO ORDERED.

6 DATED: February 3, 2011

/s/ Gregory G. Hollows

7 _____
GREGORY G. HOLLOWS
8 UNITED STATES MAGISTRATE JUDGE

9
10 phil0654.osc
GGH:14

11
12 _____
13
14
15
16
17
18
19
20
21
22
23
24
25
26