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

ANTHONY BAEZ,

Petitioner,

No. CIV S-08-1565 JAM KJN (TEMP) P

vs.

D.K. SISTO,

Respondent.

ORDER AND

FINDINGS AND RECOMMENDATIONS

_____ /

Petitioner is a California prisoner proceeding with a petition for a writ of habeas corpus under 28 U.S.C. § 2254. He challenges a 2006 denial of parole. Petitioner asserts he was denied his Fourteenth Amendment right to due process because the decision to deny him parole in 2006 was not supported by sufficient evidence.

The United States Supreme Court recently found in Swarthout v. Cooke, No. 10-333, 2011 WL 197627 (S. Ct., January 24, 2011), that prisoners being considered for parole under California law have a right arising under the Due Process Clause of the Fourteenth Amendment to be heard at their parole proceedings and a to be provided with a statement of reasons for denial of parole. Id. at *2. The Court specifically rejected the notion that there can be a valid claim under the Fourteenth Amendment for insufficiency of evidence presented at a parole proceeding. Id. at *3.

1 Because petitioner fails to allege that he was denied any of the process due under
2 the Fourteenth Amendment at his 2006 parole hearing, his application for writ of habeas corpus
3 must be denied.

4 The court notes that on September 27, 2010, respondent was ordered to provide
5 the court with psychological evaluations used by the parole board at petitioner's 2006 parole
6 proceedings. Respondent provided those evaluations on October 15, 2010, but asked the court to
7 reconsider whether the documents should be used in these proceedings. Because there is no
8 longer any reason to consider those documents, the request for reconsideration is moot.

9 Accordingly, IT IS HEREBY ORDERED that respondent's request for
10 reconsideration filed October 15, 2010 is denied as moot; and

11 IT IS HEREBY RECOMMENDED that petitioner's application for writ of habeas
12 corpus 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 twenty-
15 one days after being served with these findings and recommendations, any party may file written
16 objections with the court and serve a copy on all parties. Such a document should be captioned
17 "Objections to Magistrate Judge's Findings and Recommendations." If petitioner files
18 objections, he shall also address whether a certificate of appealability should issue and, if so, why
19 and as to which issues. A certificate of appealability may issue under 28 U.S.C. § 2253 "only if
20 the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. §
21 2253(c)(3). Any response to the objections shall be filed and served within fourteen days after
22 service of the objections. The parties are advised that failure to file objections within the

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1 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951
2 F.2d 1153 (9th Cir. 1991).

3 DATED: January 26, 2011

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KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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