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

KEVIN LANCE WILLIAMS,

Petitioner,

2: 09 - cv - 1691 - MCE TJB

vs.

CLAUDE E. FINN,

Respondent.

FINDINGS AND RECOMMENDATIONS

_____ /

Petitioner, Kevin Lance Williams, is a state prisoner proceeding, *pro se*, with petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner is currently serving an indeterminate sentence of seventeen years to life in prison after a jury convicted him on one count of murder in the second degree. Petitioner, who was convicted in 1979, has been eligible for parole for several years. Pursuant to his petition, Petitioner challenges the 2006 and 2007 decisions of the California Board of Parole Hearings (hereinafter “the Board”) denying Petitioner parole.

I. ANALYSIS OF PETITIONER’S CLAIMS

Petitioner argues that the Board acted arbitrarily and capriciously in denying his parole in 2006 and 2007 and that the denial amounts to a denial of his due process rights. The Due Process Clause of the Fourteenth Amendment prohibits state action that deprives a person of life,

1 liberty, or property without due process of law. A person alleging a due process violation must
2 first demonstrate that he or she was deprived of a protected liberty or property interest, and then
3 show that the procedures attendant upon the deprivation were not constitutionally sufficient. *See*
4 *Ky. Dep't of Corr. v. Thompson*, 490 U.S. 454, 459-60 (1989). The full panoply of rights
5 afforded a defendant in a criminal proceeding is not constitutionally mandated in the context of a
6 parole proceeding. *See Pedro v. Or. Parole Bd.*, 825 F.2d 1396, 1398-99 (9th Cir. 1987). The
7 Supreme Court has held that a parole board's procedures are constitutionally adequate if the
8 inmate is given an opportunity to be heard and a decision informing him of the reasons he did not
9 qualify for parole. *See Greenholtz v. Inmates of Neb. Penal and Corr. Complex*, 442 U.S. 1, 16
10 (1979).

11 The ability of a California state prisoner to bring a due process claim for a denial of
12 parole has changed with the recent United States Supreme Court decision in *Swarthout v. Cooke*,
13 ___ U.S. ___, 131 S.Ct. 859, 178 L.Ed.2d 732 (2011) (per curiam). Prior to *Swarthout*, the Ninth
14 Circuit held that as a matter of state law, denial of parole to California inmates must be supported
15 by at least "some evidence" demonstrating current dangerousness. *See Hayward v. Marshall*,
16 603 F.3d 546, 562-63 (9th Cir. 2010) (en banc). In its decision in *Cooke v. Solis*, 606 F.3d 1206,
17 1213 (9th Cir. 2010) *rev'd by, Swarthout*, 131 S.Ct. 859, the Ninth Circuit had held that
18 "California's 'some evidence' requirement is a component of the liberty interest created by the
19 parole system of the state."

20 As stated above, *Swarthout* reversed the Ninth Circuit in *Cooke*. The Supreme Court
21 stated that with respect to parole:

22 Whatever liberty interest exists is, of course, a *state* interest created
23 by California law. There is no right under the Federal Constitution
24 to be conditionally released before the expiration of a valid
25 sentence, and the States are under no duty to offer parole to their
26 prisoners. When, however, a state creates a liberty interest, the
Due Process Clause requires fair procedures for its vindication –
and federal courts will review the application of those
constitutionally required procedures. In the context of parole, we
have held that the procedures required are minimal. In *Greenholtz*,

1 we found that a prisoner subject to a parole statute similar to
2 California's received adequate process when he was allowed an
3 opportunity to be heard and was provided a statement of the
4 reasons why parole was denied. 442 U.S. at 16. "The
5 Constitution," we held, "does not require more." *Ibid.*

6 *Swarthout*, 131 S.Ct. at 862. The Supreme Court continued by explaining that, "[b]ecause the
7 only federal right at issue is procedural, the relevant inquiry is what process [the petitioners]
8 received, not whether the state court decided the case correctly." *Id.* at 863.

9 In this case, Petitioner was given an opportunity to be heard at his parole suitability
10 hearings in 2006 and 2007. *See* Pet., Ex. J [Pet., p. 165] (Transcript of 2006 Board hearing); *id.*,
11 Ex. B to Ex. M [Pet., p. 205] (Transcript of 2007 hearing attached to Petitioner's state habeas
12 petition). He also was given a statement of reasons why parole was denied. As the Supreme
13 Court stated in *Greenholtz* and reaffirmed in *Swarthout*, that is all that is required under the
14 Federal Constitution. Therefore, Petitioner's due process argument does not merit federal habeas
15 relief under these circumstances.

16 II. CONCLUSION

17 For all of the foregoing reasons, IT IS HEREBY RECOMMENDED that the petition for
18 writ of habeas corpus be DENIED.

19 These findings and recommendations are submitted to the United States District Judge
20 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one days
21 after being served with these findings and recommendations, any party may file written objections
22 with the court and serve a copy on all parties. Such a document should be captioned "Objections
23 to Magistrate Judge's Findings and Recommendations." Any reply to the objections shall be
24 served and filed within seven days after service of the objections. The parties are advised that
25 failure to file objections within the specified time may waive the right to appeal the District
26 Court's order. *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991). In any objections he elects to file,
Petitioner may address whether a certificate of appealability should issue in the event he elects to
file an appeal from the judgment in this case. *See* Rule 11, Federal Rules Governing Section 2254

1 Cases (the district court must issue or deny a certificate of appealability when it enters a final
2 order adverse to the applicant).

3 DATED: August 18, 2011

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TIMOTHY J BOMMER
UNITED STATES MAGISTRATE JUDGE