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

HECTOR CARDENAS,

Petitioner,

No. CIV-S-10-3463 LKK KJN (TEMP) P

vs.

BOARD OF PAROLE HEARINGS, et al., ORDER AND

Respondents.

FINDINGS AND RECOMMENDATIONS

_____ /

Petitioner, a state prisoner proceeding without counsel, has filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, together with a request to proceed in forma pauperis.

Examination of the request to proceed in forma pauperis reveals petitioner is unable to afford the costs of this action. Accordingly, leave to proceed in forma pauperis is granted. 28 U.S.C. § 1915(a).

Under Rule 4 of the Rules Governing Section 2254 Cases, the court must conduct a preliminary review of § 2254 habeas petitions and dismiss any petition where it plainly appears that petitioner is not entitled to relief in this court.

Petitioner challenges the fact the he was denied parole in 2009. He asserts the evidence presented at his parole hearing is not sufficient under the Due Process Clause of the

1 Fourteenth Amendment to sustain his being denied parole.

2 The United States Supreme Court recently found in Swarthout v. Cooke, No. 10-
3 333, 2011 WL 197627 (S. Ct., January 24, 2011), that prisoners being considered for parole under
4 California law have a right arising under the Due Process Clause of the Fourteenth Amendment to
5 be heard at their parole proceedings and a to be provided with a statement of reasons for denial of
6 parole. Id. at *2. The Court specifically rejected the notion that there can be a valid claim under
7 the Fourteenth Amendment for insufficiency of evidence presented at a parole proceeding. Id. at
8 *3.

9 Because petitioner fails to allege that he was denied any of the process due under
10 the Fourteenth Amendment at his 2009 parole hearing, his petition for writ of habeas corpus must
11 be denied.

12 In accordance with the above, IT IS HEREBY ORDERED that petitioner's request
13 to proceed in forma pauperis is granted; and

14 IT IS HEREBY RECOMMENDED that:

- 15 1. Petitioner's application for writ of habeas corpus be denied; and
- 16 2. This case be closed.

17 These findings and recommendations are submitted to the United States District
18 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-
19 one days after being served with these findings and recommendations, petitioner may file written
20 objections with the court. Such a document should be captioned "Objections to Magistrate
21 Judge's Findings and Recommendations." If petitioner files objections, he shall also address
22 whether a certificate of appealability should issue and, if so, why and as to which issues. A
23 certificate of appealability may issue under 28 U.S.C. § 2253 "only if the applicant has made a
24 substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(3). Petitioner is

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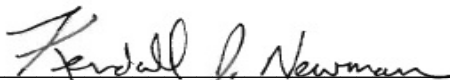
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1 advised that failure to file objections within the specified time may waive the right to appeal the
2 District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

3 DATED: January 25, 2011

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KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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