

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
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL GASNER,
Petitioner,
v.
E. ARNOLD,
Respondent.

No. 2:18-cv-2151 KJM CKD P

ORDER AND
FINDINGS AND RECOMMENDATIONS

Petitioner, a state prisoner proceeding pro se, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 together with a request to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. Examination of the request to proceed in forma pauperis reveals that petitioner is unable to afford the costs of suit. Accordingly, the request for leave to proceed in forma pauperis will be granted. See 28 U.S.C. § 1915(a).

Under Rule 4 of the Rules Governing Section 2254 Cases, the court must review all petitions for writ of habeas corpus and summarily dismiss any petition if it is plain that the petitioner is not entitled to relief. The court has conducted that review.

Petitioner challenges Governor Brown’s reversal of the California Board of Parole Hearings’ finding of suitability for parole. Essentially, petitioner challenges the sufficiency of the evidence for denying parole.

////

1 Petitioner does have a liberty interest in parole protected by the Due Process Clause of the
2 Fourteenth Amendment. Swarthout v. Cooke, 562 U.S. 216, 220 (2011). However, the
3 procedural protections which must be afforded with respect to the liberty interest implicated are
4 minimal; the “Constitution does not require more” than “an opportunity to be heard” at a parole
5 hearing and that the potential parolee be “provided a statement of the reasons why parole was
6 denied.” Id. There is no due process requirement, or requirement under any other provision of
7 federal law, that the evidence supporting a denial of parole reach a certain threshold. Id. at 220-
8 21.

9 For these reasons, it is plain that the petitioner is not entitled to habeas relief and his
10 habeas petition must be summarily dismissed.

11 Accordingly, IT IS HEREBY ORDERED that petitioner’s request for leave to proceed in
12 forma pauperis (ECF No. 4) is granted.

13 IT IS HEREBY RECOMMENDED that:

- 14 1. Petitioner’s petition for writ of habeas corpus be summarily dismissed; and
- 15 2. This case be closed.

16 These findings and recommendations are submitted to the United States District Judge
17 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
18 after being served with these findings and recommendations, petitioner may file written
19 objections with the court. Such a document should be captioned “Objections to Magistrate
20 Judge’s Findings and Recommendations.” In his objections petitioner may address whether a
21 certificate of appealability should issue in the event he files an appeal of the judgment in this
22 case. See Rule 11, Federal Rules Governing Section 2254 Cases (the district court must issue or
23 deny a certificate of appealability when it enters a final order adverse to the applicant). Petitioner

24 ////

25 ////

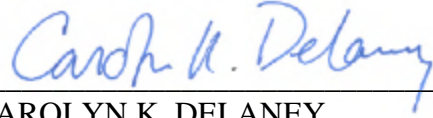
26 ////

27 ////

28 ////

1 is 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: September 17, 2018



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
gasn2151.par