

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

KEITH LETTIER,

Petitioner,

VS.

EDDIE YLST, Acting Warden,

Respondent.

No. C 06-4544 JSW (PR)

ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS; DENYING CERTIFICATE OF APPEALABILITY

Petitioner seeks a writ of habeas corpus under 28 U.S.C. § 2254 challenging the January 11, 2006 decision of the California Board of Parole Hearings (“BPH”) denying him parole. Specifically, Petitioner claims the decision does not comport with due process because it is not supported by some evidence demonstrating that he poses a current threat to public safety and because BPH employed the “some evidence” standard rather than a preponderance of the evidence standard in evaluating his suitability for parole.

The United States Supreme Court recently made clear that in the context of a federal habeas challenge to the denial of parole, a prisoner subject to a parole statute similar to California's receives adequate process when BPH allows him an opportunity to be heard and provides him with a statement of the reasons why parole was denied.

1 Swarthout v. Cooke, No. 10-333, slip op. at 4–5 (U.S. Jan. 24, 2011) (per curiam). Here,
2 the record shows Petitioner received at least this amount of process. See Doc. #3, Exh. 3
3 at 5–9 & 73–80. The Constitution does not require more. Swarthout, slip op. at 5.

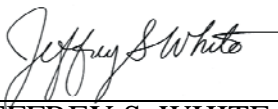
4 The Court also made clear that whether BPH’s decision was supported by some
5 evidence of current dangerousness is irrelevant in federal habeas: “it is no federal
6 concern . . . whether California’s ‘some evidence’ rule of judicial review (a procedure
7 beyond what the Constitution demands) was correctly applied.” Swarthout, slip op. at 6.
8 Accordingly, the instant federal Petition for a Writ of Habeas corpus is **DENIED**.

9 Further, a Certificate of Appealability is **DENIED**. See Rule 11(a) of the Rules
10 Governing Section 2254 Cases. Petitioner has not made “a substantial showing of the
11 denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). Nor has Petitioner
12 demonstrated that “reasonable jurists would find the district court’s assessment of the
13 constitutional claims debatable or wrong.” Slack v. McDaniel, 529 U.S. 473, 484
14 (2000). Petitioner may not appeal the denial of a Certificate of Appealability in this
15 Court but may seek a certificate from the Court of Appeals under Rule 22 of the Federal
16 Rules of Appellate Procedure. See Rule 11(a) of the Rules Governing Section 2254
17 Cases.

18 The clerk shall terminate any pending motions as moot, enter judgment in favor of
19 Respondent and close the file.

20 IT IS SO ORDERED.

21 DATED: February 8, 2011

22 
23 _____
24 JEFFREY S. WHITE
25 United States District Judge
26
27
28

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA
4

5 KEITH LETTIER,
6

7 Plaintiff,
8

9 v.
10

11 CA BOARD OF PRISON HEARINGS et al,
12

13 Defendant.
14 _____/

Case Number: CV06-04544 JSW

CERTIFICATE OF SERVICE

15 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
16 Court, Northern District of California.

17 That on February 8, 2011, I SERVED a true and correct copy(ies) of the attached, by placing
18 said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by
19 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office
20 delivery receptacle located in the Clerk's office.
21

22 Keith Lettier
23 3018 - 73rd Avenue
24 Oakland, CA 94605
25

26 Dated: February 8, 2011
27



28 Richard W. Wieking, Clerk
By: Jennifer Ottolini, Deputy Clerk