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

GREGORY ASHBY,
Petitioner,
vs.
BEN CURRY, Warden,
Respondent.

No. C 07-2015 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 October 27, 2004 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 relied on the unchanging factors of his commitment offense in denying him 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. Swarthout v. Cooke, No. 10-333, slip op. at 4–5 (U.S. Jan. 24, 2011) (per curiam). Here,

1 the record shows Petitioner received at least this amount of process. See Doc. #1, Exh. 1
2 at 6–10 & 73–78. The Constitution does not require more. Swarthout, slip op. at 5.


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

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

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

19 IT IS SO ORDERED.

20 DATED: February 8, 2011

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22 _____
23 JEFFREY S. WHITE
24 United States District Judge
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1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA
4

5 GREGORY ASHBY,
6 Plaintiff,
7

Case Number: CV07-02015 JSW

CERTIFICATE OF SERVICE

8 v.

9 B. CURRY et al,
10 Defendant.
_____ /

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

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

17 Gregory Ashby
18 D44929
19 CSP-Solano
20 P.O. Box 4000 Bldg. 18
21 Vacaville, CA 95696-4000

22 Dated: February 8, 2011



23 Richard W. Wieking, Clerk
24 By: Jennifer Ottolini, Deputy Clerk
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