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United States District Court
For the Northern District of California

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

WILLIAM G. OLDRIGHT,)	No. C 07-3231 MMC (PR)
)	
Petitioner,)	ORDER DENYING PETITION FOR
)	WRIT OF HABEAS CORPUS;
v.)	DENYING CERTIFICATE OF
)	APPEALABILITY
B. CURRY, Warden,)	
)	
Respondent.)	
_____)	

On June 19, 2007, petitioner, a California prisoner incarcerated at the Correctional Training Facility at Soledad and proceeding pro se, filed the above-titled petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging a 2005 decision by the California Board of Prison Hearings (“Board”) to deny petitioner parole. Respondent filed an answer to the petition and petitioner filed a traverse.

Subsequently, the Ninth Circuit issued its decision in Hayward v. Marshall, 603 F.3d 546 (9th Cir. 2010) (en banc), which addressed important issues relating to federal habeas review of Board decisions denying parole to California state prisoners. After the parties filed supplemental briefs explaining their views of how the Hayward en banc decision applies to the facts presented in the instant petition, the United States Supreme Court filed its opinion in Swarthout v. Cooke, No. 10-333, – S. Ct. –, 2011 WL 197627 (U.S. Jan. 24, 2011), which

1 opinion clarifies the constitutionally required standard of review applicable to the claims
2 raised herein.

3 For the reasons discussed below, the petition will be denied.

4 **BACKGROUND**

5 In 1991, in the Superior Court of Kern County (“Superior Court”), a jury found
6 petitioner guilty of second degree murder and found the allegation of use of a firearm to be
7 true. Petitioner was sentenced to a term of eighteen years to life in state prison. The
8 judgment of conviction was affirmed on appeal, and the California Supreme Court denied
9 review.

10 Petitioner’s third parole suitability hearing, which is the subject of the instant petition,
11 was held on November 8, 2005. At the conclusion of the hearing, the Board, after discussing
12 the facts of the commitment offense with petitioner, reviewing his mental health reports as
13 well as social and criminal history, and evaluating his progress while incarcerated, found
14 petitioner was not yet suitable for parole and would pose a current unreasonable risk of
15 danger to society or threat to public safety if released from prison. (Resp’t Answer to Order
16 to Show Cause (“Answer”) Ex. C.)¹

17 After he was denied parole, petitioner filed a petition for a writ of habeas corpus in the
18 Superior Court, challenging the Board’s decision. In an opinion issued June 14, 2006, the
19 Superior Court denied relief, finding the Board properly applied state parole statutes and
20 regulations to reach its decision. (Ex. E.) Thereafter, the California Court of Appeal
21 summarily denied petitioner habeas relief, and the California Supreme Court denied review.
22 (Exs. F & G)

23 Petitioner next filed the instant petition, in which he claims the Board did not provide
24 him with a hearing that met the requirements of federal due process because the decision to
25 deny parole was not supported by some evidence that petitioner poses a current danger to
26 society if released, and the Board misapplied applicable state parole regulations when

27 ¹All references herein to exhibits are to exhibits submitted by respondent in support of
28 the Answer.

1 weighing the evidence on which it relied to reach its decision.

2 **DISCUSSION**

3 A. Standard of Review

4 A federal district court may entertain a petition for writ of habeas corpus “in behalf of
5 a person in custody pursuant to the judgment of a State court only on the ground that he is in
6 custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C.
7 § 2254(a). The petition may not be granted with respect to any claim that was adjudicated on
8 the merits in state court unless the state court’s adjudication of the claim: “(1) resulted in a
9 decision that was contrary to, or involved an unreasonable application of, clearly established
10 Federal law, as determined by the Supreme Court of the United States; or (2) resulted in a
11 decision that was based on an unreasonable determination of the facts in light of the evidence
12 presented in the State court proceeding.” 28 U.S.C. § 2254(d); see Williams (Terry) v.
13 Taylor, 529 U.S. 362, 409-13 (2000). Section 2254(d) applies to a habeas petition filed by a
14 state prisoner challenging the denial of parole. Sass v. California Board of Prison Terms, 461
15 F.3d 1123, 1126-27 (9th Cir. 2006).

16 Here, as noted, the state appellate courts summarily denied petitioner relief. Thus, the
17 Superior Court was the highest state court to address the merits of petitioner’s claim in a
18 reasoned decision, and it is that decision which this Court reviews under § 2254(d). See Ylst
19 v. Nunnemaker, 501 U.S. 797, 803-04 (1991); Barker v. Fleming, 423 F.3d 1085, 1091-92
20 (9th Cir. 2005).

21 B. Petitioner’s Claims

22 Under California law, prisoners serving indeterminate life sentences, like petitioner
23 herein, become eligible for parole after serving minimum terms of confinement required by
24 statute. In re Dannenberg, 34 Cal. 4th 1061, 1078 (2005). Regardless of the length of time
25 served, “a life prisoner shall be found unsuitable for and denied parole if in the judgment of
26 the panel the prisoner will pose an unreasonable risk of danger to society if released from
27 prison.” Cal. Code Regs. tit. 15 (“CCR”), § 2402(a). In making the determination as to
28 whether a prisoner is suitable for parole, the Board must consider various factors specified by

1 state statute and parole regulations. In re Rosenkrantz, 29 Cal. 4th 616, 654 (2002); see CCR
2 § 2402(b)–(d). When a state court reviews a Board’s decision denying parole, the relevant
3 inquiry is whether “some evidence” supports the decision of the Board that the inmate poses
4 a current threat to public safety. In re Lawrence, 44 Cal. 4th 1181, 1212 (2008).

5 As noted, petitioner claims the Board did not provide him with a hearing that met the
6 requirements of federal due process because the decision to deny parole was not supported by
7 some evidence that petitioner poses a current danger to society if released, and the Board
8 misapplied applicable state parole regulations when weighing the evidence on which it relied
9 to reach its decision.

10 Federal habeas corpus relief is unavailable for an error of state law. Swarthout v.
11 Cooke, No. 10-333, – S. Ct. –, 2011 WL 197627 at *2 (U.S. Jan. 24, 2011). Under certain
12 circumstances, however, state law may create a liberty or property interest that is entitled to
13 the protections of federal due process. In particular, while there is “no constitutional or
14 inherent right of a convicted person to be conditionally released before the expiration of a
15 valid sentence,” Greenholtz v. Inmates of Nebraska Penal & Corr. Complex, 442 U.S. 1, 7
16 (1979), a state’s statutory parole scheme, if it uses mandatory language, may create a
17 presumption that parole release will be granted when, or unless, certain designated findings
18 are made, and thereby give rise to a constitutionally protected liberty interest. See id. at
19 11-12. The Ninth Circuit has determined that California law creates such a liberty interest in
20 release on parole. Cooke, 2011 WL 197627 at *2.

21 When a state creates a liberty interest, the Due Process Clause requires fair procedures
22 for its vindication, and federal courts will review the application of those constitutionally
23 required procedures. Id. In the context of parole, the procedures necessary to vindicate such
24 interest are minimal: a prisoner receives adequate process when “he [is] allowed an
25 opportunity to be heard and [is] provided a statement of the reasons why parole was denied.”
26 Id. “The Constitution does not require more.” Id.

27 Here, the record shows petitioner received at least the process found by the Supreme
28 Court to be adequate in Cooke. See id. (finding process adequate where petitioners “were

1 allowed to speak at their parole hearings and to contest the evidence against them, were
2 afforded access to their records in advance, and were notified as to the reasons why parole
3 was denied”). Specifically, the record shows that petitioner was represented by counsel at
4 the hearing (Ex. C at 2), that the Board afforded petitioner and his counsel time to review
5 documents relevant to petitioner’s case (Ex. C at 5), that petitioner discussed with the Board
6 the details of the commitment offense and other factors considered by the Board (Ex. C at
7 11-46, 54-65), that both petitioner and his counsel spoke at the hearing and advocated
8 petitioner’s release (Ex. C at 65-70), and that petitioner received a thorough explanation as to
9 why the Board denied parole (Ex. C at 71-75).

10 Further, because California’s “some evidence” rule is not a substantive federal
11 requirement, whether the Board’s decision to deny parole was supported by some evidence of
12 petitioner’s current dangerousness is not relevant to this Court’s decision on the instant
13 petition for federal habeas corpus relief. Cooke, 2011 WL at *3. The Supreme Court has
14 made clear that the only federal right at issue herein is procedural; consequently, “it is no
15 federal concern . . . whether California’s ‘some evidence’ rule of judicial review (a procedure
16 beyond what the Constitution demands) was correctly applied.” Id.

17 As the record shows petitioner received all the process to which he was
18 constitutionally entitled, the Court finds the state court’s adjudication of petitioner’s claims
19 did not result in a decision that was contrary to, or involved an unreasonable application of,
20 clearly established federal law, nor did it result in a decision that was based on an
21 unreasonable determination of the facts in light of the evidence presented in the state court
22 proceeding. 28 U.S.C. § 2254(d). Accordingly, the petition for a writ of habeas corpus will
23 be denied.

24 C. Certificate of Appealability

25 A certificate of appealability will be denied as to each of petitioner’s claims. See 28
26 U.S.C. § 2253(c)(1)(a); Rules Governing Habeas Corpus Cases Under § 2254, Rule 11
27 (requiring district court to issue or deny certificate of appealability when entering final order
28 adverse to petitioner). Specifically, petitioner has neither made “a substantial showing of the

1 denial of a constitutional right,” Hayward v. Marshall, 603 F.3d 546, 554-55 (9th Cir. 2010)
2 (en banc) (citing 28 U.S.C. § 2253(c)(2)), nor demonstrated that his claim is “debatable
3 among reasonable jurists.” Id. at 555.

4 **CONCLUSION**


5 For the reasons stated above, the Court orders as follows:

- 6 1. The petition for a writ of habeas corpus is hereby DENIED.
7 2. A certificate of appealability is hereby DENIED.

8 The Clerk shall enter judgment in favor of respondent and close the file.

9 IT IS SO ORDERED.

10 DATED: February 2, 2011

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12 MAXINE M. CHESNEY
13 United States District Judge
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