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

CLEVE OTIS HULSEY,
Petitioner,

vs.

BEN CURRY, Warden,
Respondent.

Nos. C 08-1009 JSW (PR)
C 10-1754 JSW (PR)

**ORDER DENYING PETITIONS FOR
WRIT OF HABEAS CORPUS AND
CERTIFICATES OF
APPEALABILITY; DENYING
PENDING MOTIONS**

CLEVE OTIS HULSEY,
Petitioner,

vs.

RANDY GROUNDS, Warden,
Respondent.

(Docket Nos. 5 & 9)

INTRODUCTION

Petitioner, a California prisoner proceeding pro se, filed these petitions for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The petitions challenge decisions by the Board of Parole Hearings (“Board”) to deny him parole in 2006 and 2008, respectively. For the reasons set out below, the petitions are denied.

1 requirement.” *Id.* It is simply irrelevant in federal habeas review “whether California’s
2 ‘some evidence’ rule of judicial review (a procedure beyond what the Constitution
3 demands) was correctly applied.” *Id.* at 6. In light of the Supreme Court’s determination
4 that due process does not require that there be any amount of evidence to support the
5 parole denial, Petitioner’s “some evidence” claim fails.

6 B. Right to a Jury

7 Petitioner also claims that his right to due process and to a jury trial were violated
8 because the Board relied upon facts that were neither charged nor proven by a jury. The
9 Sixth Amendment’s right to a jury affords criminal defendants the right to an impartial
10 jury at trial. *See Duncan v. Louisiana*, 391 U.S. 145, 149 (1968) (emphasis added).
11 Petitioner cites no authority, and this Court is aware of none, extending the right to a jury
12 trial to a parole eligibility hearing. Indeed, as discussed above, in *Swarthout* the Supreme
13 Court held that due process requires no more than notice of the decision and an
14 opportunity to be heard. Nor is there any authority that parole officials may not rely upon
15 facts not proven at trial; indeed, the very nature of the parole determination requires
16 consideration of many facts, including the prisoner’s post-conviction record, that were
17 neither charged nor proven at trial. In the absence of any authority that it is
18 unconstitutional for the Board to consider facts, including facts about the commitment
19 offense, not charged or proven at trial in making a parole determination, habeas relief is
20 not available on this claim.

21 **CONCLUSION**

22 For the foregoing reasons, the petitions for a writ of habeas corpus are DENIED.
23 The motion to file a supplemental brief in case number 08-1009 JSW (PR), and the
24 motion to dismiss in case number 10-1754 JSW (PR) are DENIED as unnecessary.

25 Rule 11(a) of the Rules Governing Section 2254 Cases now requires a district
26 court to rule on whether a Petitioner is entitled to a certificate of appealability in the same
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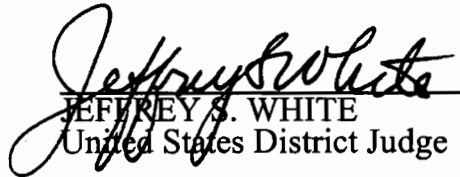
1 order in which the petition is decided. Petitioner has failed to make a substantial showing
2 that his claims amounted to a denial of his constitutional rights or demonstrate that a
3 reasonable jurist would find this Court's denial of his claim debatable or wrong. *Slack v.*
4 *McDaniel*, 529 U.S. 473, 484 (2000). Consequently, no certificate of appealability is
5 warranted in these cases.

6 This order terminates docket number 9 in case number 08-1009 JSW (PR) and
7 docket number 5 in case number 10-1754 JSW (PR).

8 The Clerk shall enter judgment and close the file.

9 IT IS SO ORDERED.

10 DATED: FEB 17 2011

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12 JEFFREY S. WHITE
13 United States District Judge
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