

1 #1 at 6.

2 After the Court issued an order to show cause why a writ
3 of habeas corpus should not be granted, Respondent filed, and the
4 Court granted, a Motion to Dismiss the Petition as "mixed" because
5 it contained both exhausted and unexhausted claims. Doc. ## 4 & 7;
6 See Rhines v. Weber, 544 U.S. 269, 271, 277 (2005) ("mixed" petition
7 is one that contains both exhausted and unexhausted claims); 28
8 U.S.C. § 2254(b) & (c). Rather than ordering an outright dismissal,
9 the Court granted Petitioner thirty days to serve and file a notice
10 in which he stated whether he elected to: (1) dismiss the
11 unexhausted claims (Claims Two and Three) and go forward in this
12 action with only the remaining exhausted claim (Claim One); or (2)
13 dismiss this action and return to state court to exhaust all of his
14 claims before returning to federal court to present all of his
15 claims in a new petition; or (3) move for a stay of these
16 proceedings while he exhausts his state court remedies for the
17 unexhausted claims. On January 26, 2010, Petitioner filed a Motion
18 to Dismiss his unexhausted claims (Claims Two and Three) and proceed
19 with his sole exhausted claim (Claim One). Doc. #8.

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 This Court may entertain a petition for a writ of habeas
corpus "in behalf of a person in custody pursuant to the judgment of
a State court only on the ground that he is in custody in violation
of the Constitution or laws or treaties of the United States." 28
U.S.C. § 2254(a). It shall "award the writ or issue an order
directing the respondent to show cause why the writ should not be

1 granted, unless it appears from the application that the applicant
2 or person detained is not entitled thereto." Id. § 2243.

3 A habeas petition may be dismissed if it plainly appears
4 from the face of the petition and any exhibits attached thereto that
5 the petitioner is not entitled to relief. Hendricks v. Vasquez, 908
6 F.2d 490, 491 (9th Cir. 1990). Summary dismissal is appropriate if
7 the allegations in the petition are vague or conclusory, palpably
8 incredible, or patently frivolous or false. Id.

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10 II

11 In Claim One, Petitioner challenges the constitutionality
12 of BPH's use of the "some evidence" standard set forth in
13 Superintendent v. Hill, 472 U.S. 445, 457 (1985) and argues that the
14 proper standard of review to be applied at parole suitability
15 hearings is that of a preponderance of evidence.

16 The Ninth Circuit has made clear that the "some evidence"
17 standard identified by the Supreme Court in Hill is clearly
18 established federal law in the parole context. See Irons v. Carey,
19 505 F.3d 846, 850 (9th Cir. 2007); Sass v. Calif. Bd. of Prison
20 Terms, 461 F.3d 1123, 1128-29 (9th Cir. 2006). No Ninth Circuit
21 precedent, much less Supreme Court precedent, even suggests a more
22 stringent standard in the parole suitability context. Accord
23 Nikooseresht v. Curry, No. C 06-4357 MHP (PR), 2007 WL 2088558, at
24 *8 (N.D. Cal. July 18, 2007) (rejecting petitioner's claim that the
25 state must prove his unsuitability for parole under "substantial
26 evidence" standard).

27 Because it plainly appears from the face of the Petition
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1 that Petitioner is not entitled to relief on his claim that the
2 proper standard of review to be applied at parole suitability
3 hearings is that of a preponderance of evidence, the Petition is
4 subject to dismissal. See 28 U.S.C. § 2243.
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6 III

7 For the foregoing reasons, the Petition for Writ of Habeas
8 Corpus is DISMISSED. The Clerk is directed to terminate any pending
9 motions as moot and close the file.
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12 IT IS SO ORDERED.

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14 DATED

2/8/10



THELTON E. HENDERSON
United States District Judge