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5 IN THE UNITED STATES DISTRICT COURT
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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8 RUFUS THOMPCKINS,
9 Petitioner,

10 vs.

11 B. CURRY, Warden,
12 Respondent.
13 _____

No. C 08-4671 JSW (PR)

**ORDER DENYING PETITION FOR
WRIT OF HABEAS CORPUS AND
CERTIFICATE OF APPEALABILITY**

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15 Petitioner, a prisoner of the State of California, filed this pro se petition for a writ
16 of habeas corpus pursuant to 28 U.S.C. § 2254. The petition challenges the decision by
17 the California Board of Parole Hearings (“Board”) to deny him parole in 2006.

18 Petitioner claims that the denial of parole violated his right to due process because
19 it was not supported by sufficient evidence of his current dangerousness. The United
20 States Supreme Court has recently held that a California prisoner is entitled to only
21 “minimal” procedural protections in connection with a parole suitability determination.
22 *Swarthout v Cooke*, No 10-333, slip op. at 4-5 (U.S. Jan. 24, 2011). Specifically, the Due
23 Process Clause of the Fourteenth Amendment to the U.S. Constitution only entitles a
24 California prisoner to an opportunity to be heard and a statement of the reasons why
25 parole was denied. *Id.* at 4-5. The parole hearing transcript makes it clear that Petitioner
26 received an opportunity to be heard and a statement of the reasons parole was denied.
27 The Constitution does not require more. *Id.* at 5. The Court explained that no Supreme
28 Court case “supports converting California’s ‘some evidence’ rule into a substantive

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

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

13 The Clerk shall enter judgment and close the file.

14 IT IS SO ORDERED.

15 DATED: ~~FEB 17~~ 2011

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17 JEFFREY S. WHITE
18 United States District Judge
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