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

EDWARD SOLORZANO RENTERIA,

No. C-08-5237 TEH (PR)

Petitioner,

v.

ORDER DENYING PETITION FOR WRIT
OF HABEAS CORPUS; DENYING
CERTIFICATE OF APPEALABILITY

ROBERT AYERS, JR., Warden,

Respondent.

_____/

Petitioner, a state prisoner incarcerated at Corcoran State Prison, has filed a pro se Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254 challenging the California Board of Parole Hearings' ("B.P.H.") refusal to grant him parole at his second parole hearing held on March 6, 2007. Doc. #1-1; Doc. #1-2; see Doc. #1-1 at 8 & 26. On April 1, 2009, the Court issued an Order to Show Cause why the writ should not be granted. Doc. #3. On June 1, 2009, Respondent filed an Answer. Doc. #4. On June 19, 2009, Petitioner filed a Traverse. Doc. #5.

After the matter was submitted, on April 22, 2010, the Ninth Circuit issued its decision in Hayward v. Marshall, 603 F.3d

1 546 (9th Cir. 2010) (en banc), which addressed important issues
2 relating to federal habeas review of BPH decisions denying parole to
3 California state prisoners. On May 5, 2010, the Court ordered the
4 parties to file supplemental briefing explaining their views of how
5 the Hayward en banc decision applies to the facts presented in
6 Petitioner's challenge to BPH's decision denying him parole. Doc.
7 #9. Respondent filed supplemental briefing on May 28, 2010;
8 Petitioner filed his on August 2, 2010. Doc. ## 11 & 15.

9 Having considered all of the papers filed by the parties,
10 the Court DENIES the Petition.

11
12 I

13 In November 1994, Petitioner was convicted in Santa Clara
14 County Superior Court of second degree murder and possession of a
15 controlled substance and was sentenced to an indeterminate term of
16 seventeen years to life in state prison. Doc. #4-1 at 25. At
17 Petitioner's parole suitability hearing, BPH read two factual
18 summaries into the record. The first, set forth below, derived from
19 the probation officer's report of Petitioner's commitment offense.

20 [Petitioner] and [the] victim, Valerie L.
21 Renteria, were married and the parents of two
22 children. During the first part of 1980, they
23 were separated and residing apart. [Petitioner]
24 was not welcome in his in-laws home where
Valerie lived and reports indicate her parents
opposed any reconciliation of Valerie and the
defendant.

25 On Friday, March 7, 1980, Valerie told
26 friends with whom she had lunch and her brother,
27 she was going to meet [Petitioner] and that he
28 had a surprise for her. She had been speaking
with friends about the possibility she and
[Petitioner] would soon reconcile. She was

1 apparently planning to spend the weekend with
2 [Petitioner], because she told her cousin she
3 would not be at a reception on Saturday, as she
4 was meeting [Petitioner].

5 That evening, the victim dropped off her
6 children at her aunt's home, as they were to
7 stay there for the weekend. On the morning of
8 March 8th, 1980, [Petitioner] picked up her and
9 the victim's two boys from the victim's aunt's
10 home. The children stayed with him at his
11 parents['] home until he returned them to the
12 home of their maternal grandparents on the
13 evening of Sunday March 9th, 1980. Among the
14 children's clothing he brought back with them
15 was the victim's panty girdle. [When] Valerie
16 did not return home and on March 10th, 1980, a
17 missing person's report was filed.

18 Co-workers of the victim told police the
19 victim had been excited on Friday March 7,
20 because she was going to meet [Petitioner] and
21 talk about a reconciliation. When she did not
22 report to work the following Monday, they just
23 assumed she was with [Petitioner]. Friends from
24 [the victim's] employment told the police the
25 victim had had lunch with them Friday during
26 which she had spoken of her plans to meet
27 [Petitioner] that evening. [Petitioner]
28 reported to police he and the victim had gone to
 lunch on Friday, March 7th, and she had told him
 she was going away with friends for the weekend.
 He advised she had told him the children would
 be at her aunt's home and had given him
 directions to the home where he could pick them
 up.

 On March 28th, 1980, a private detective
 advised police two checks on the victim's
 checking account had been returned by the bank
 with irregular signatures. Both checks had been
 made out to cash, one dated March 6th, 1980, was
 for 100 dollars and the other dated March 7th,
 1980, was for 150 dollars. [Petitioner] had
 cashed them at a liquor store on March 10th,
 1980. He explained Valeri[e] had given him the
 checks on the Monday or Tuesday prior to her
 disappearance and that she had postdated them
 because he normally pays his bills on Friday.
 He had needed the money to pay bills. He
 admitted he was in arrears in the amount of
 9,000 dollars for child support and that his
 wages were being garnished 69 dollars per

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paycheck for this.

A handwriting expert determined the victim did not sign the checks, but that they were signed by [Petitioner] in an attempt to copy the victim's signature. [Petitioner] was interviewed on March 12th, 1980, and advised police he had seen the victim at her place of employment on March 7, 1980. There she told him she was spending the weekend with friends and that her children would be at her aunt's home. He volunteered to take care of their children and she provide[d] him with directions to where they would be staying. He reported he had spent the evening of March 7th, at his brother Gary's home, where they had played cards. [Petitioner] had then stayed the night there until he left to pick up his boys from Valerie's aunt's home.

His brother subsequently confirmed [Petitioner] had been at his home the evening and night of the victim's disappearance. The victim's aunt advised police the victim had been excited the evening she had dropped the children off at her home. She explained the victim had indicated she and [Petitioner] were going out to dinner and dancing together. The victim had told her aunt the defendant would be picking up the children the next morning.

Ms. Emma Reynosa, . . . a friend of the victim reported to police the victim had told her she was going to spend the weekend with [Petitioner]. Previously, the victim had confided in her the fact [Petitioner] had beaten her after an argument while she was pregnant with her youngest child. Also, approximately two months prior to her disappearance, the victim had advised Ms. Reynosa that some of her dresses in her closet had been cut with a razor blade or something. The victim told Ms. Reynosa [Petitioner] had done it. Ms. Reynosa additionally stated [Petitioner] had tried to force himself on Valerie's younger sister and female friends of the victim.

On June 9, 1980, the resident of 399 Gray Ghost in San Jose telephoned police and reported finding a human skull in the storage shed in the backyard. The skull was sitting on top of a mattress. Some teeth and the lower jaw was missing from the skull. Nothing further was found in the backyard.

1 On June 15, 1980, the resident at 399 Gray
2 Ghost reported to police a human jawbone had
3 been found in the middle of the backyard. Some
4 teeth were missing from the jawbone that proved
5 to match the skull found at the same address six
6 days earlier. . . .

7 On August 29, 1980, a man was walking
8 northbound on the southbound shoulder of Highway
9 101, approximately three-fourths to one mile
10 south of the Hilyer Overpass. He found a
11 printed circuit board and began to search the
12 area further when he noticed an orange sheet of
13 plastic behind a tree approximately 20 to 30
14 feet from where he was. His investigation
15 revealed a decomposed foot sticking out from
16 under the cloth. The body proved to be that of
17 a female whose head was missing. Loose teeth
18 found with the body perfectly fit into the skull
19 and jawbone found in June at 399 Gray Ghost.
20 Dental records revealed the body was that of the
21 victim, Valerie Renteria.

22 A review of this unsolved case was done by
23 investigators in the District Attorney's Office
24 during May of 1993. They realized that although
25 [Petitioner's] brother Gary had told police
26 [Petitioner] had spent the night of the victim's
27 disappearance at his home, Gary's wife was never
28 interviewed to confirm this. During an
interview with her, Olivia Soria, . . . told
investigators she and Gary divorced in 1990.
She also advised police [Petitioner] never
stayed the night at she and Gary's home prior to
several months after Valerie's disappearance.
She was not aware that Gary had ever been
questioned by the police at the time this
occurred.

 On May 14th, 1993, Gary Renteria was
interviewed at his place of employment. He
again stated [Petitioner] had spent the night
the victim disappeared at his home. When
confronted with the statement made by his ex-
wife that this was not true, Mr. Gary Renteria
admitted what his ex-wife [said] was true. He
explained that his brother, [Petitioner], had
told him to tell anyone who asked that [he] had
spent the night in question playing cards at his
home.

 After the investigators interviewed Gary
Renteria, the[y] decided that Gary may inform

1 [Petitioner] of the contents of the discussion.
2 Fearing [Petitioner] would flee, a complaint was
3 issued against him. Investigators went to his
4 home and arrested him. In the front pocket of
5 the shorts he was wearing was a vial containing
6 a white powder substance which proved to be
7 methamphetamine. [Petitioner] was booked into
8 county jail.

9 Doc. #4-1 at 34-41.

10 Petitioner's version of the commitment offense, set forth
11 below, is taken from a January 25, 2007 letter he wrote to his
12 correctional counselor.

13 This is in response to your request for my
14 version of events in regards to my case. I'm
15 not going to go into any details about the case,
16 because of the misleading information that is
17 being perpetuated by the District Attorney's
18 office as to the [cause] of death. The District
19 Attorney has access to all the court transcripts
20 and if he would take the time to review them, he
21 would see that Richard T. Mason, M.D., along
22 with John E. Houser, M.D., from the Santa Clara
23 County Office[] of the Coroner[] both could not
24 determine the cause of death.

25 Furthermore, both Dr. Mason and Dr. Houser
26 testified under oath that the cause of death was
27 not because of stabbing, strangulation,
28 shooting, beating or decapitation. This is why
I'm attaching a copy of the death certificate,
which is a legal and binding document which
clearly states that the cause of death is
undetermined. The District Attorney will not do
this, because it would constitute him reopening
my case, which he can't do and the Board can't
do.

I accept full responsibility for my
actions. If I could turn back the hands of time
and change what happened, I would, but I can't.
I regret the pain and suffering I have caused to
all concerned and I feel great remorse and
humility for my actions and I'm sorry. I'm
[d]oing everything possible to rehabilitate
myself and I strive to become a better man in
the eyes of God and to my fellow women and men.

1 This Board hearing is not about reopening
2 my case. It's supposed to be about determining
3 my suitability for parole based upon how I have
4 conducted myself in prison and about which steps
5 I have taken to turn my life around and
6 rehabilitate myself so that I can become a more
7 active and productive member of society and to
8 help others in making the right choices in life
9 so that they do not end up devastating their
10 lives or the lives of others.

11 Doc. #4-1 at 41-43.

12 BPH ultimately concluded that Petitioner was not yet
13 suitable for parole and would pose a current unreasonable risk of
14 danger to society or threat to public safety if released from
15 prison. Doc. #4-2 at 72. After he was denied parole, Petitioner
16 filed a petition for writ of habeas corpus in Santa Clara County
17 Superior Court, which was denied on April 18, 2008. Doc. #4-3 at
18 2-3. The California Court of Appeal summarily denied a petition
19 filed there on August 21, 2008. Doc. #4-6 at 2. The California
20 Supreme Court summarily denied his Petition for Review on October
21 16, 2008. Doc. #4-8 at 2. The instant federal Petition for a Writ
22 of Habeas Corpus followed. Doc. #1.

23
24 II

25 In Hayward, the Ninth Circuit explained the law in
26 California as it relates to parole suitability determinations:

27 The California parole statute provides that
28 the Board of Prison Terms "shall set a release
date unless it determines that the gravity of
the current convicted offense or offenses, or
the timing and gravity of current or past
convicted offense or offenses, is such that
consideration of the public safety requires a
more lengthy period of incarceration for this
individual." The crucial determinant of whether

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the prisoner gets parole in California is "consideration of the public safety."

In California, when a prisoner receives an indeterminate sentence of fifteen years to life, the "indeterminate sentence is in legal effect a sentence for the maximum term, subject only to the ameliorative power of the [parole authority] to set a lesser term." Under the California parole scheme, the prisoner has a right to a parole hearing and various procedural guarantees and rights before, at, and after the hearing; a right to subsequent hearings at set intervals if the Board of Prison Terms turns him down for parole; and a right to a written explanation if the Governor exercises his authority to overturn the Board of Prison Terms' recommendation for parole. Under California law, denial of parole must be supported by "some evidence," but review of the [decision to deny parole] is "extremely deferential."

Hayward, 603 F.3d at 561-62 (footnotes and citations omitted).

The court further explained that:

[s]ubsequent to Hayward's denial of parole, and subsequent to our oral argument in this case, the California Supreme Court established in two decisions, In re Lawrence . . . and In re Shaputis, . . . that as a matter of state law, "some evidence" of future dangerousness is indeed a state sine qua non for denial of parole in California. We delayed our decision in this case so that we could study those decisions and the supplemental briefs by counsel addressing them. As a matter of California law, "the paramount consideration for both the Board [of Prison Terms] and the Governor under the governing statutes is whether the inmate currently poses a threat to public safety." . . . There must be "some evidence" of such a threat, and an aggravated offense "does not, in every case, provide evidence that the inmate is a current threat to public safety." . . . The prisoner's aggravated offense does not establish current dangerousness "unless the record also establishes that something in the prisoner's pre- or post-incarceration history, or his or her current demeanor and mental state" supports the inference of dangerousness. . . . Thus, in California, the offense of conviction may be considered, but the consideration must address

1 the determining factor, "a current threat to
2 public safety."

3 Hayward, 603 F.3d at 562 (footnotes and citations omitted).

4 After providing this background on California law as it
5 applies to parole suitability determinations, the court then
6 explained the role of a federal district court charged with
7 reviewing the decision of either BPH or the governor in denying a
8 prisoner parole. According to the Ninth Circuit, this Court must
9 decide whether a decision "rejecting parole was an 'unreasonable
10 application' of the California 'some evidence' requirement, or was
11 'based on an unreasonable determination of the facts in light of the
12 evidence.'" Hayward, 603 F.3d at 562-63 (citations omitted); see
13 also Cooke v. Solis, 606 F.3d 1206, 1208, n. 2 & 1213 (9th Cir.
14 2010) (applying Hayward and explicitly rejecting the state's
15 argument that "the constraints imposed by [the Antiterrorism and
16 Effective Death Penalty Act ("AEDPA")] preclude federal habeas
17 relief" on petitioner's claim; noting that in Hayward, the court
18 "held that due process challenges to California courts' application
19 of the 'some evidence' requirement are cognizable on federal habeas
20 review under AEDPA").

21
22 III

23 When assessing whether the California parole board's
24 suitability determination was supported by "some evidence," this
25 Court's analysis is framed by the "regulatory, statutory and
26 constitutional provisions that govern parole decisions in
27 California." Cooke, 606 F.3d at 1213 (citing In re Rosenkrantz, 29

1 Cal. 4th 616 (2002)); see Hayward, 603 F.3d at 561-62. Under
2 California law, prisoners serving indeterminate life sentences, like
3 Petitioner, become eligible for parole after serving minimum terms
4 of confinement required by statute. In re Dannenberg, 34 Cal. 4th
5 1061, 1069-70 (2005). Regardless of the length of the time served,
6 "a life prisoner shall be found unsuitable for and denied parole if
7 in the judgment of the panel the prisoner will pose an unreasonable
8 risk of danger to society if released from prison." Cal. Code Regs.
9 tit. 15, § 2402(a). In making this determination, BPH must consider
10 various factors, including the prisoner's social history, past and
11 present mental state, past criminal history, the base and other
12 commitment offenses, including behavior before, during and after the
13 crime, past and present attitude toward the crime and any other
14 information that bears on the prisoner's suitability for release.
15 See Cal. Code Regs. tit. 15, § 2402(b)-(d).

16 In considering the commitment offense, BPH must determine
17 whether "the prisoner committed the offense in an especially
18 heinous, atrocious or cruel manner." Cal. Code Regs. tit. 15, §
19 2402(c)(1). The factors to be considered in making that
20 determination include: "(A) Multiple victims were attacked, injured
21 or killed in the same or separate incidents; (B) The offense was
22 carried out in a dispassionate and calculated manner, such as an
23 execution-style murder; (C) The victim was abused, defiled or
24 mutilated during or after the offense; (D) The offense was carried
25 out in a manner which demonstrates an exceptionally callous
26 disregard for human suffering; (E) The motive for the crime is
27 inexplicable or very trivial in relation to the offense." Id.

1 According to the California Supreme Court, "the core
2 statutory determination entrusted to the Board and the Governor [in
3 determining a prisoner's parole suitability] is whether the inmate
4 poses a current threat to public safety" In re Lawrence, 44
5 Cal. 4th 1181, 1191 (2008). And, "the core determination of 'public
6 safety' under the statute and corresponding regulations involves an
7 assessment of an inmate's current dangerousness." Id. at 1205
8 (emphasis in original) (citing Rosenkrantz, 29 Cal. 4th 616 &
9 Dannenberg, 34 Cal. 4th 1061). The court further explained that:

10 a parole release decision authorizes the Board
11 (and the Governor) to identify and weigh only
12 the factors relevant to predicting "whether the
13 inmate will be able to live in society without
14 committing additional antisocial acts." . . .
15 These factors are designed to guide an
16 assessment of the inmate's threat to society, if
17 released, and hence could not logically relate
18 to anything but the threat currently posed by
19 the inmate.

20 Lawrence, 44 Cal. 4th at 1205-06 (citations omitted). The relevant
21 inquiry, therefore, is:

22 whether the circumstances of the commitment
23 offense, when considered in light of other facts
24 in the record, are such that they continue to be
25 predictive of current dangerousness many years
26 after commission of the offense. This inquiry
27 is, by necessity and by statutory mandate, an
28 individualized one, and cannot be undertaken
simply by examining the circumstances of the
crime in isolation, without consideration of the
passage of time or the attendant changes in the
inmate's psychological or mental attitude.

In re Shaputis, 44 Cal. 4th 1241, 1254-55 (2008).

 The evidence of current dangerousness "must have some
indicia of reliability." In re Scott, 119 Cal. App. 4th 871, 899
(2004) (Scott I). Indeed, "the 'some evidence' test may be

1 understood as meaning that suitability determinations must have some
2 rational basis in fact." In re Scott, 133 Cal. App. 4th 573, 590,
3 n. 6 (2005) (Scott II); see also Cooke, 606 F.3d at 1216 (holding
4 that the state court decision upholding the denial of parole was
5 ""based on an unreasonable determination of the facts in light of
6 the evidence[],"" Hayward, 603 F.3d at 563 (quoting 28 U.S.C. §
7 2254(d)(2)), and therefore finding petitioner entitled to habeas
8 relief because "[n]othing in the record supports the state court's
9 finding that there was 'some evidence' in addition to the
10 circumstances of the commitment offense to support the Board's
11 denial of petitioner's parole").

12
13 IV

14 After careful review of the law and the evidence, and as
15 set forth below, this Court cannot say that the state court's
16 approval of BPH's decision to deny Petitioner parole was an
17 unreasonable application of the California "some evidence" standard,
18 nor that it was based on an unreasonable determination of the facts
19 in light of the evidence. See Hayward, 603 F.3d at 563.

20 As an initial matter, the record shows that, at
21 Petitioner's March 6, 2007 parole suitability hearing, BPH afforded
22 Petitioner and his counsel an opportunity to speak and present
23 Petitioner's case, gave them time to review documents relevant to
24 Petitioner's case and provided them with a reasoned decision in
25 denying parole. Doc. #4-1 at 32-34; Doc. #4-2 at 61-66 & 72-84.
26 The record also shows that BPH relied on several circumstances
27 tending to show unsuitability for parole and that these

1 circumstances formed the basis for its conclusion that Petitioner
2 was not yet suitable for parole and would pose a current
3 unreasonable risk of danger to society or threat to public safety if
4 released from prison. Doc. #4-2 at 72-84; see Lawrence, 44 Cal. 4th
5 at 1191, 1205; Cal. Code Regs. tit. 15, § 2402(a) (stating that a
6 prisoner determined to be an unreasonable risk to society shall be
7 denied parole).

8 BPH explained its decision as follows:

9 The victim was defiled and mutilated. We're not
10 sure if that was during or after the offense in
11 that by the time that authorities found the
12 victim, the skeletal remains were basically in
13 pieces.

14

15 The murder of the victim did not deter
16 [Petitioner] from later committing other
17 criminal offenses. And, specifically, again,
18 the death of Mrs. Renteria occurred back in 1980
19 . . . and [there was an] assault to commit rape
20 [in] July of 1984 and sexual battery, with
21 serious bodily injury where . . . [Petitioner]
22 pled and was convicted of false imprisonment,
23 assault with a deadly [weapon], not a firearm,
24 with great bodily injury likely where he did
25 receive jail and probation. And then followed
26 by in 1988, in April, he was arrested for two
27 counts of battery. He was convicted of one
28 count of battery and received two years
probation, fine and restitution.

29

30 We find that [Petitioner] does have a
31 record of violence and somewhat assaultive
32 behavior. And again, this goes to his . . .
33 adult arrests and convictions. The three that
34 we have on record, besides the life crime, all
35 had . . . some type of assaultive nature to it
36 [sic]. . . . the first one in '77 was assault,
37 battery[,] disturbing the peace, misdemeanor
38 drunk driving. Then the second one, arrested
39 for assault to commit rape and then . . . [the]
40 battery and then you've got the life crime. So,

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one could say that there was a somewhat escalating pattern of criminal conduct depending on how you take a look at the series of events that occurred.

[W]e find that he does have a history of somewhat tumultuous relationships with others. And this was really based on our discussion with [Petitioner] where he did relay to the Panel, especially when we were discussing anger and temper, et cetera, and propensity towards acting out violently, that he did relay the information that he was in many, many fights starting back when he was in high school and that's one of the reasons why he had joined the Marines was to get away from [the] sort of environment that he was surrounded by and getting into fights all the time. But he also admitted that he also continued to get into fights even within the Marine Corps.

He has failed previous grants of probation. He's failed to profit from society's previous attempts to correct his criminality. Such attempts include fines, adult probation and county jail. And we find that he does have somewhat of an unstable social history in that he was an abuser of alcohol and drugs. And specifically the drugs were his use of methamphetamine. And again, one of his first arrests happened to be for drunk driving and all the other instances that he relayed, well, ["I was drunk, I was drunk."]

. . . .

We find that the psychological report . . . is somewhat unfavorable and not supportive of release. . . . [The report notes that] "[t]aking into consideration[] the antisocial personality traits identified in [Petitioner], resumption of either alcohol or methamphetamine would be of further concern to this interviewer if he were released into the community."

And I do want to add this in regarding [Petitioner's] level of insight and remorse, that [he] did describe himself as a cold person who kept people at a distance and that he admits to having been impulsive and unable to accept criticism. And we did have a little discussion about that. However, . . . this psychological [evaluation] states he's currently at a mild

1 risk for violent behavior, provided he remains
2 abstinent from drugs and alcohol.

3 Doc. #4-2 at 72-77; see id. at 80-83. BPH noted Petitioner had
4 attended at least seventy self-help programs in the last three
5 years, but noted that:

6 sometimes it's not quantity, it's the quality of
7 the things that you're doing. Because it's your
8 job to prove . . . to any Panel and everybody
9 involved in these hearings that you are a
10 changed person. And . . . this Panel did not
11 see that today, in light of you spending the
12 time [attending self-help programs]. So, . . .
13 you're commended because you have attended a
14 lot, but we really have not seen the results of
15 your attendance

12 Doc. #4-2 at 78.

13 In addition to commending Petitioner for the number of
14 self-help programs he attended, BPH acknowledged that Petitioner was
15 disciplinary-free and had marketable skills, and had parole plans
16 that included a place to live and possible employment. Doc. #4-2 at
17 79 & 81. BPH recommended that Petitioner remain disciplinary-free,
18 continue to upgrade educationally and vocationally and continue to
19 participate in self-help programming, but in a "more meaningful"
20 way. Id. at 83.

21 After reviewing the petition filed in superior court
22 challenging BPH's decision to deny Petitioner parole, the court
23 found that "sufficient evidence supports the parole denial."¹ See

24
25 ¹ Here, the state appellate courts summarily denied Petitioner
26 relief; the state superior court was the highest state court to
27 address the merits of Petitioner's claim in a reasoned decision. It
28 is that decision, therefore, that the Court analyzes. See LaJoie v.
Thompson, 217 F.3d 663, 669 n.7 (9th Cir. 2000); Williams v. Rhoades,
354 F.3d 1101, 1106 (9th Cir. 2004) (federal court may look to any

1 Doc. #4-3 at 2. Specifically, the court noted the "uncontroverted
2 evidence" that the victim's body was "defiled and mutilated[,]" that
3 Petitioner's "other criminal activity still weighs against him[,]"
4 and that BPH's "concerns about Petitioner's alcoholism are supported
5 by some evidence." Id. at 3. The court concluded "[t]hese reasons
6 are substantial enough to require that the Court affirm [BPH's]
7 decision." Id.

8 Based on the entire body of evidence presented at
9 Petitioner's March 6, 2007 parole suitability hearing, which
10 included evidence of Petitioner's history of violence and assaultive
11 behavior and tumultuous relationships, his failures to profit from
12 society's previous attempts to correct his violent criminality, and
13 history of substance abuse, the Court cannot say that the state
14 court's approval of BPH's decision to deny Petitioner parole was an
15 unreasonable application of the California "some evidence" standard,
16 nor that it was based on an unreasonable determination of the facts
17 in light of the evidence. See Hayward, 603 F.3d at 563; Cal. Code
18 Regs. tit. 15, § 2402(b)-(d). Petitioner therefore is not entitled
19 to federal habeas relief.

20 The Court reaches this conclusion in spite of the superior
21 court's observation that ". . . the Board may well have erred in
22 using Petitioner's invocation of his right not to discuss the crime
23 against him, and in discounting Petitioner's marketable skills,
24 support through the Veterans Administration, and multiple offers of

25 _____
26 lower state court decision that was examined, and whose reasoning was
27 adopted, by the highest state court to address the merits of a
28 petitioner's claim).

1 residence. Doc. #4-3 at 2. Even if BPH "erred" Petitioner still
2 would not be entitled to federal habeas relief because there was
3 "some evidence" that Petitioner was not yet suitable for parole and
4 would pose a current unreasonable risk of danger to society or
5 threat to public safety if released from prison. See Hayward, 603
6 F.3d at 563; Lawrence, 44 Cal. 4th at 1191, 1205; Cal. Code Regs.
7 tit. 15, § 2402(a).

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For the foregoing reasons, the Petition for a Writ of
Habeas Corpus is DENIED. Further, a Certificate of Appealability is
DENIED. See Hayward, 603 F.3d at 554-55. Petitioner has failed to
make "a substantial showing of the denial of a constitutional
right." Id. (citing 28 U.S.C. § 2253(c)(2)). Nor has Petitioner
demonstrated that his claim is "debatable among reasonable jurists."
See Hayward, 603 F.3d at 555.

The Clerk of Court shall terminate all pending motions as
moot, enter judgment in accordance with this Order and close the
file.

IT IS SO ORDERED.

DATED 08/30/10



THELTON E. HENDERSON
United States District Judge