



1 years to life in state prison. Doc. #1 at 22. Petitioner's minimum  
2 parole eligibility date was August 25, 1991. Id.

3 Petitioner filed a pro se Petition for Writ of Habeas  
4 Corpus in the California Court of Appeal challenging BPH's decision  
5 to deny him parole, which the court denied on October 1, 2008. Doc.  
6 #1, Ex. C. The California Supreme Court denied a Petition filed  
7 there on December 10, 2008. Id.

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9 II

10 This Court may entertain a Petition for a Writ of Habeas  
11 Corpus "in behalf of a person in custody pursuant to the judgment of  
12 a State court only on the ground that he is in custody in violation  
13 of the Constitution or laws or treaties of the United States." 28  
14 U.S.C. § 2254(a). It shall "award the writ or issue an order  
15 directing the respondent to show cause why the writ should not be  
16 granted, unless it appears from the application that the applicant  
17 or person detained is not entitled thereto." Id. § 2243.

18 Petitioner seeks federal habeas corpus relief due to BPH's  
19 failure to grant him parole at his March 26, 2008 parole hearing on  
20 the ground that the denial violates due process. Among other  
21 things, Petitioner claims that the decision is not supported by some  
22 evidence in the record.

23 Liberally construed, Petitioner's claim appears colorable  
24 under section 2254 and merits an Answer from Respondent. See Sass  
25 v. Cal. Bd. of Prison Terms, 461 F.3d 1123, 1127-29 (9th Cir. 2006)  
26 (finding that refusal to set parole date for prisoner with  
27 15-to-life sentence implicated prisoner's liberty interest in  
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1 release on parole which cannot be denied without adequate procedural  
2 due process protections).

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4 III

5 For the foregoing reasons and for good cause shown,

6 1. Petitioner's request to proceed in forma pauperis is  
7 GRANTED.

8 2. The Clerk shall serve a copy of this Order and the  
9 Petition and all attachments thereto on Respondent and Respondent's  
10 attorney, the Attorney General of the State of California. The  
11 Clerk also shall serve a copy of this Order on Petitioner.

12 3. Respondent shall file with the Court and serve on  
13 Petitioner, within 60 days of the issuance of this order, an Answer  
14 conforming in all respects to Rule 5 of the Rules Governing Section  
15 2254 Cases, showing cause why a Writ of Habeas Corpus should not be  
16 granted. Respondent shall file with the Answer and serve on  
17 Petitioner a copy of all portions of the state trial record that  
18 have been transcribed previously and that are relevant to a  
19 determination of the issues presented by the Petition.

20 If Petitioner wishes to respond to the Answer, he shall do  
21 so by filing a Traverse with the Court and serving it on Respondent  
22 within 30 days of his receipt of the Answer.

23 4. In lieu of an Answer, Respondent may file a Motion to  
24 Dismiss on procedural grounds, as set forth in the Advisory  
25 Committee Notes to Rule 4 of the Rules Governing Section 2254 Cases.  
26 If Respondent files such a motion, Petitioner shall file with the  
27 Court and serve on Respondent an Opposition or Statement of

1 Non-Opposition within 30 days of receipt of the motion, and  
2 Respondent shall file with the Court and serve on Petitioner a Reply  
3 within 15 days of receipt of any Opposition.

4 5. Petitioner is reminded that all communications with  
5 the Court must be served on Respondent by mailing a true copy of the  
6 document to Respondent's counsel. Petitioner also must keep the  
7 Court and all parties informed of any change of address.

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IT IS SO ORDERED.

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DATED

06/09/09



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THELTON E. HENDERSON  
United States District Judge

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