

1 great bodily injury enhancement, and was sentenced to an
2 indeterminate term of 22 years to life in state prison. Doc. #1-1
3 at 2 & #1-4 at 3. Petitioner's minimum parole eligibility date was
4 November 12, 2004. Doc. #1-4 at 3.

5 Petitioner filed a pro se petition for a writ of habeas
6 corpus in San Francisco Superior Court arguing that the BPH's
7 decision to deny him parole at his second parole suitability hearing
8 held on March 6, 2008, constituted a violation of his plea
9 agreement. The San Francisco Superior Court denied the petition on
10 December 12, 2008. Doc. #1-2 at 11-13. The California Court of
11 Appeal denied petitioner's appeal on February 4, 2009. Doc. #1-2 at
12 4. The California Supreme Court denied his Petition for Review on
13 April 15, 2009. Doc. #1-2 at 1.

14 On May 13, 2009, Petitioner filed the instant Petition for
15 a Writ of Habeas Corpus again challenging the BPH's decision to deny
16 him parole at his second parole suitability hearing held on March 6,
17 2008. Doc. #1. Respondent has filed an Answer and Petitioner has
18 filed a Traverse. Doc. ## 14 & 18.

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20 II.

21 The San Francisco County Superior Court provided the
22 following procedural background of the case:

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24 Petitioner is serving a prison sentence of 22 years to
25 life following his conviction for second-degree murder and
26 other crimes in San Francisco Superior Court in 1989. The
27 documentation attached to the petition indicates
28 petitioner killed his wife several hours after he had been
released from prison on a parole violation. His minimum
eligible parole date on the life term was November 12,
2004.

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Petitioner alleges that he entered a guilty plea to involuntary manslaughter. He seems to complain the Board is violating the terms of his plea bargain by treating him as a murder convict and continually denying him parole.

Doc. #1-2 at 11-12.

III.

Under the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), codified under 28 U.S.C. § 2254, a federal court may not grant a writ of habeas corpus on any claim adjudicated on the merits in state court unless the adjudication : "(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established federal law, as determined by the Supreme Court of the United States; or (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U.S.C. § 2254(d).

"Under the 'contrary to' clause, a federal habeas court may grant the writ if the state court arrives at a conclusion opposite to that reached by [the Supreme] Court on a question of law or if the state court decides a case differently than [the] Court has on a set of materially indistinguishable facts." Williams (Terry) v. Taylor, 529 U.S. 362, 412-13 (2000). "Under the 'unreasonable application' clause, a federal habeas court may grant the writ if the state court identifies the correct governing legal principle from [the] Court's decision but unreasonably applies that principle to the facts of the prisoner's case." Id. at 413.

"[A] federal habeas court may not issue the writ simply

1 because that court concludes in its independent judgment that the
2 relevant state-court decision applied clearly established federal
3 law erroneously or incorrectly. Rather, that application must be
4 objectively unreasonable." Lockyer v. Andrade, 538 U.S. 63, 75-76
5 (2003) (internal quotation marks and citation omitted). Moreover,
6 in conducting its analysis, the federal court must presume the
7 correctness of the state court's factual findings, and the
8 petitioner bears the burden of rebutting that presumption by clear
9 and convincing evidence. 28 U.S.C. § 2254(e)(1).

10 In four decisions this year alone, the United States
11 Supreme Court reaffirmed the heightened level of deference a federal
12 habeas court must give to state court decisions. See Harrington v.
13 Richter, 131 S. Ct. 770, 783-85 (2011); Premo v. Moore, 131 S. Ct.
14 733, 739-40 (2011); Felkner v. Jackson, 131 S. Ct. 1305, 1307-08
15 (2011) (per curiam); Cullen v. Pinholster, 131 S. Ct. 1388,
16 1398-1400 (2011). As the Court explained: "[o]n federal habeas
17 review, AEDPA 'imposes a highly deferential standard for evaluating
18 state-court rulings' and 'demands that state-court decisions be
19 given the benefit of the doubt.'" Felkner, 131 S. Ct. at 1307
20 (citation omitted).

21 When applying these standards, the federal court should
22 review the "last reasoned decision" by the state courts. Avila v.
23 Galaza, 297 F.3d 911, 918 n.6 (9th Cir. 2002) (treating state court
24 referee's report as the last reasoned state court decision where
25 report was summarily adopted by the court of appeal and petition for
26 review to California Supreme Court was denied without comment).
27 Because the California Supreme Court summarily denied relief on
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1 Petitioner's due process claim regarding the BPH's refusal to grant
2 him parole, this Court looks to the San Francisco County Superior
3 Court's December 12, 2008, written decision denying Petitioner's
4 appeal when considering his claim.

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6 IV.

7 Petitioner seeks habeas relief under 28 U.S.C. § 2254,
8 challenging the BPH's failure to grant him parole at his March 6,
9 2008 parole hearing. He argues that his continued incarceration
10 violates his due process rights because it breaches the terms of his
11 plea agreement. Doc. #1 at 2. Specifically, Petitioner argues that
12 a life term means a lifetime of parole, not of imprisonment, and
13 that under the terms of his plea agreement, he has served his
14 sentence and the BPH should grant him parole. Doc. #15 at 3.

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16 A

17 The San Francisco Superior Court found that Petitioner's
18 plea agreement did not require the BPH to grant him parole:

19 [Petitioner's] claim fails. The documentation attached to
20 the petition reflects petitioner was convicted of second-
21 degree murder, and received a sentence of 22 years to
22 life. A prisoner serving a life sentence is not entitled
23 to have his term fixed at less than the maximum or to get
24 a parole date. (In re Rosenkrantz (2002) 29 Cal. 4th 616,
25 655, cert. den.) Before the Board may set a parole
26 release date for a life prisoner, it must first find the
27 life prisoner suitable for parole. (In re Dannenberg
28 (2005) 34 Cal.4th 1061, 1080 reh'g. den., cert. den.) The
Board must set a release date unless it determines, in its
discretion, that the prisoner would pose an unreasonable
risk of danger to society if released. (Cal. Pen. Code §
3041, subd.(b); 15 Cal. Admin. Code §§ 2281, subd. (a),
2402; see Dannenberg, supra, 34 Cal.4th at 1084 [an
"inmate whose offense was so serious as to warrant, at the
outset, a maximum term of life in prison, may be denied

1 parole during whatever time the Board deems required for
2 this individual by consideration of the public safety"].)
3 The Board has exclusive authority to decide whether a life
4 prisoner is suitable for parole (In re Powell (1988) 45
5 Cal.3d 894, 901, 248), and must duly consider of the
6 prisoner's relevant circumstances in evaluating parole
7 suitability (Rosenkrantz, supra, 29 Cal.4th at 655).

8 Here the Board found petitioner's release unreasonably
9 endangers public safety and some evidence in the record
10 supports this conclusion. Petitioner committed the murder
11 in a manner demonstrating an exceptionally callous
12 disregard for human suffering, his motive was
13 inexplicable, and his insight into the crime is still
14 limited (at the hearing he kept denying his involvement in
15 the crime). Moreover, his programming in prison has been
16 limited, and he has failed previous grants of parole and
17 probation.

18 Petitioner fails to show the Board's actions have been
19 illegal, and the court therefore DENIES the petition for
20 failure to state a prima facie claim for relief (writ
21 5852).

22 Doc. #1-2 at 12-13.

23 B.

24 The Fourteenth Amendment provides that no state may
25 "deprive any person of life, liberty, or property, without due
26 process of law." U.S. Const., amend. XIV, § 1. The fundamental
27 fairness protected by the Due Process Clause requires that promises
28 made during plea bargaining and in analogous contexts be respected;
however, this rule is subject to two conditions: the promisor must
be authorized to make the promise and the defendant must rely to his
detriment on the promise. See Johnson v. Lumpkin, 769 F.2d 630, 633
(9th Cir. 1985). "[W]hen a plea rests in any significant degree on
a promise or agreement of the prosecutor, so that it can be said to
be a part of the inducement or consideration, such promise must be
fulfilled." Santobello v. New York, 404 U.S. 257, 262 (1971).

1 The Due Process clause also protects inmates' liberty
2 interest in discretionary parole. "California's parole scheme gives
3 rise to a cognizable liberty interest in release on parole."
4 McQuillion v. Duncan, 306 F.3d 895, 902 (9th Cir. 20020), overruled
5 on other grounds by Swarthout v. Cooke, 131 S. Ct. 859, 861-62
6 (2011). The scheme creates a presumption that parole release will
7 be granted unless the statutorily defined determinations are made.
8 Id. In the context of parole, an inmate has received adequate due
9 process "when he was allowed an opportunity to be heard and was
10 provided a statement of the reasons why parole was denied." Cooke,
11 131 S. Ct. at 862 (citing Greenholtz v. Inmates of Nebraska Penal &
12 Corr. Complex, 442 U.S. 1, 16 (1979)). As long as the petitioner
13 received at least that much process, the federal court's habeas
14 review is at an end. See Cooke, 131 S. Ct. at 862; see Miller v.
15 Oregon Bd. Of Parole and Post-Prison Supervision, 642 F.3d 711, 716-
16 17 (9th Cir. 2011).

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18 C.

19 Here, Petitioner argues that his due process rights were
20 violated because the BPH failed to grant him parole at his March 6,
21 2008 parole hearing. Petitioner does not allege that he did not
22 have an opportunity to be heard at the parole hearing. Nor does he
23 allege that he was not provided a statement of the reasons why
24 parole was denied.

25 The San Francisco County Superior Court's rejection of
26 Petitioner's claim was not an objectively unreasonable application
27 of clearly established federal law. See 28 U.S.C. § 2254(d).

1 Petitioner acknowledges that he was sentenced to a sentence of 22
2 years to life. Doc. #1 at 2. However, Petitioner incorrectly
3 argues that a life term means a lifetime of parole, not of
4 imprisonment, and that under the terms of his plea agreement, he has
5 served his sentence and should be released. Doc. #15 at 3.

6 The state court reasonably determined that Petitioner's
7 plea agreement does not entitle him to parole or a release date when
8 he has served the minimum term on his sentence. Under California
9 law, "[a] prisoner serving a life sentence is not entitled to have
10 his term fixed at less than the maximum or to get a parole date."
11 Doc. #1-2 at 12.

12 Petitioner's life term sentence entitles him to have his
13 parole application "duly considered based upon an individualized
14 consideration of all relevant factors." In re Rosenkrantz, 29 Cal.
15 at 655. The state court reasonably found that Petitioner's parole
16 application received the proper consideration. The record indicates
17 that Petitioner received adequate process: Petitioner was allowed an
18 opportunity to be heard and was provided a statement of the reasons
19 why parole was denied. Cooke, 131 S. Ct. at 862.¹ Petitioner is

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21 ¹The San Francisco County Superior Court considered Petitioner's
22 petition for a writ of habeas corpus in 2008. At that time, the Ninth
23 Circuit had held that it was clearly established law, as determined
24 by the Supreme Court of the United States, that a parole board's
25 decision deprived a prisoner of due process if the board's decision
26 was not supported by some evidence in the record or was otherwise
27 arbitrary. See Sass v. California Bd. of Prison Terms, 461 F.3d 1123,
28 1128-29 (9th Cir. 2006).

25 However, in 2011, the Supreme Court held that there is no federal
26 right "to be conditionally released before the expiration of a valid
27 sentencethe Due Process requires fair procedures for [the]
28 vindication [of the liberty interest created in parole] and federal
courts will review the application of those constitutionally required
procedures. . . . the relevant inquiry is what process [was] received,

1 not entitled to federal habeas relief on his due process claim.

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v.

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For the foregoing reasons, the instant federal Petition for a Writ of Habeas corpus is DENIED.

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The Clerk shall terminate any pending motions as moot, enter judgment in favor of Respondent and close the file.

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IT IS SO ORDERED.

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DATED 9/29/2011



THELTON E. HENDERSON
United States District Judge

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not whether the state court decided the case correctly." Cooke, 131 S. Ct. at 862-63. The Supreme Court found that a prisoner had received adequate process where he received an opportunity to be heard and was provided a statement of the reasons why parole was denied. Id. at 862. The federal court had no authority in habeas to determine whether California's "some evidence" rule was correctly applied. Id. at 863.

Under both the pre-Cooke standard and the current standard, Petitioner has received adequate process. "Some evidence" supported the BPH's denial of parole (Doc. #1-4 at 12) and the record indicates that Petitioner received an opportunity to be heard and was notified as to the reasons why parole was denied.