

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

ANTONIO RODRIGUEZ,)	No. C 09-3606 JSW (PR)
Petitioner,)	ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS AND CERTIFICATE OF APPEALABILITY; DENYING MOTION TO DISMISS
vs.)	
BEN CURRY, Warden,)	
Respondent.)	
)	(Docket No. 7)

Petitioner, a prisoner of the State of California, filed this pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The petition challenges the decision by the California Board of Parole Hearings (“Board”) to deny him parole in 2007.¹

Petitioner claims that his right to due process was violated because there was not “some evidence” to support the denial of parole on the grounds that he would pose an unreasonable risk of danger to the public if released. The United States Supreme Court has recently held that a California prisoner is entitled to only “minimal” procedural protections in connection with a parole suitability determination. *Swarthout v Cooke*, No 10-333, slip op. at 4-5 (U.S. Jan. 24, 2011). Specifically, the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution only entitles a California prisoner to an opportunity to be heard and a statement of the reasons why parole was denied. *Id.* at 4-5.

¹There is some ambiguity as to whether the petition also challenges a prior parole denial, in 2003. However, Petitioner makes it clear in his opposition to the motion to dismiss that he is only challenging the 2007 decision.

1 The parole hearing transcript makes it clear that Petitioner received an opportunity to be
2 heard and a statement of the reasons parole was denied. The Constitution does not require
3 more. *Id.* at 5. The Court further explained that no Supreme Court case “supports
4 converting California’s ‘some evidence’ rule into a substantive federal requirement.” *Id.*
5 It is simply irrelevant in federal habeas review “whether California’s ‘some evidence’ rule
6 of judicial review (a procedure beyond what the Constitution demands) was correctly
7 applied.” *Id.* at 6. In light of the Supreme Court’s determination that due process does
8 not require that there be any amount of evidence to support the parole denial, Petitioner’s
9 claims challenging the sufficiency of such evidence do not present a valid basis for federal
10 habeas relief.

11 Petitioner also claims that the denial of parole violates his right to due process
12 because under California law, the factors for determining parole are the same factors used
13 to support a conviction for first-degree murder with special circumstances. Petitioner
14 cites no authority holding that using similar factors in this manner violates due process.
15 Moreover, as explained above, the Supreme Court has held that all due process requires is
16 an opportunity to be heard and a statement of the reasons parole was denied, which
17 Petitioner received.

18 Petitioner also claims that the denial of parole effectively converted his conviction
19 from second-degree murder to first-degree murder. While Petitioner was denied parole in
20 2003 and 2007, he had been eligible for parole after fifteen years, which would not be the
21 case if he was in prison for first-degree murder because first-degree murder carries a
22 sentence of death, life in prison without the possibility of parole, or twenty-five years to
23 life. As Petitioner’s sentence has not been changed by the Board’s decision, his claims
24 premised upon such a contention are without merit.

25 Petitioner claims that the Board violated his plea bargain by denying parole. The
26 plea bargain called for a sentence of fifteen years to life, and that is what Petitioner received. A
27 sentence of fifteen years to life does not guarantee *release* from prison after fifteen years,
28

1 or indeed upon reaching the Minimum Eligible Parole Date. It only guarantees *eligibility*
2 for parole as of that date. There is no contention that Petitioner is not receiving the
3 consideration for parole to which his sentence of fifteen years-to-life entitles him.
4 Accordingly, Petitioner is not entitled to federal habeas relief on this claim.

5 For the reasons discussed, the petition for a writ of habeas corpus is DENIED. In
6 light of this conclusion, Respondent's motion to dismiss the petition (docket number 7) is
7 DENIED as moot.

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

15 The Clerk shall enter judgment and close the file.

16 IT IS SO ORDERED.

17 DATED: February 25, 2011

18 
19 JEFFREY S. WHITE
United States District Judge