IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

MARK LUGO,

Petitioner,

v.

RANDY GROUNDS,

Respondent.

/

No. C 10-01604 JSW

**ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS**

Petitioner, Mark Lugo, a state prisoner, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, seeking relief on the ground that the California Board of Parole Hearings ("BPH") has violated the Due Process Clause of the 14th Amendment to the United States Constitution by its denial of parole to Petitioner. Specifically, Petitioner claims the decision does not comport with due process because it is not supported by some evidence demonstrating that he currently poses an unreasonable risk of danger to public safety.

The United States Supreme Court recently made clear that in the context of a federal habeas challenge to the denial of parole, a prisoner subject to California's parole statute receives adequate process when BPH allows him an opportunity to be heard and provides him with a statement of the reasons why parole was denied. *Swarthout v. Cooke*, 131 S.Ct. 859 (2011) (per curiam). Here, the record shows Petitioner received at least this amount of process. See Doc. no. 1, Exh. B at 29-55, 73–77. The Constitution does not require more. *Swarthout*, 131 S.Ct. at 863.

The Supreme Court also made clear that whether BPH's decision was supported by some evidence of current dangerousness is irrelevant in federal habeas: "it is no federal concern . . . whether California's 'some evidence' rule of judicial review (a procedure beyond what the Constitution demands) was correctly applied." *Swarthout*, 131 S.Ct. at 863. Accordingly, the instant federal Petition for a Writ of Habeas corpus is DENIED.

Further, a Certificate of Appealability is DENIED. *See* Rule 11(a) of the Rules Governing Section 2254 Cases. Petitioner has not made "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Nor has Petitioner demonstrated that "reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Petitioner may not appeal the denial of a Certificate of Appealability in this Court but may seek a certificate from the Court of Appeals under Rule 22 of the Federal Rules of Appellate Procedure. *See* Rule 11(a) of the Rules Governing Section 2254 Cases.

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

**IT IS SO ORDERED.**

Dated: February 25, 2011

JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE