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

VONDELL LEWIS,

Petitioner,

v.

RANDY GROUNDS, Warden,

Respondent.

No. C-10-1621 TEH (PR)

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

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Petitioner filed a pro se petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 in which he claimed that a decision by the Board of Parole Hearings to find him not suitable for parole violated his right to due process because it was not supported by sufficient evidence. Doc. #1. Respondent has filed an answer and Petitioner has filed a traverse. Doc. ## 6 & 7.

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 a parole statute similar to California's receives adequate process when BPH allows him an opportunity to be heard and provides him with a statement of the

1 reasons why parole was denied. Swarthout v. Cooke, 131 S.Ct. 859,  
2 862-63 (2011) (per curiam). Here, the record shows Petitioner  
3 received at least this amount of process. The Constitution does not  
4 require more. Swarthout, 131 S.Ct at 862.

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

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

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

IT IS SO ORDERED.

DATED 03/04/2011



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THELTON E. HENDERSON  
United States District Judge