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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

HARRY BARTON,

No. C 10-4556 SI (pr)

Petitioner,

**ORDER DENYING HABEAS
PETITION**

v.

ROBERT WONG, warden,

Respondent.

_____ /

United States District Court
For the Northern District of California

Harry Barton, an inmate at San Quentin State Prison, filed this pro se action seeking a writ of habeas corpus pursuant to 28 U.S.C. § 2254. In his petition, he claims that the Board of Parole Hearings' November 14, 2007 determination that he was not suitable for parole denied him due process because there was insufficient evidence to support the decision. His petition is now before the court for review pursuant to 28 U.S.C. §2243 and Rule 4 of the Rules Governing Section 2254 Cases.

This court may entertain a petition for writ of habeas corpus "in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a). A district court considering an application for a writ of habeas corpus shall "award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto." 28 U.S.C. § 2243.

1 A “federal court may issue a writ of habeas corpus to a state prisoner ‘only on the ground
2 that he is in custody in violation of the Constitution or laws or treaties of the United States.’”
3 Swarthout v. Cooke, No. 10-333, slip op. 1, 4 (U.S. Jan. 24, 2011) (citations omitted.) The
4 court may not grant habeas relief for state law errors. Id.

5 For purposes of federal habeas review, a California prisoner is entitled to only “minimal”
6 procedural protections in connection with a parole suitability determination. The procedural
7 protections to which the prisoner is entitled under the Due Process Clause of the Fourteenth
8 Amendment to the U.S. Constitution are limited to an opportunity to be heard and a statement
9 of the reasons why parole was denied. See id. at 4-5. The Court explained that no Supreme
10 Court case “supports converting California’s ‘some evidence’ rule into a substantive federal
11 requirement,” id. at 5, and the Ninth Circuit erred in holding otherwise.


12 In light of the Supreme Court’s determination that the constitutionally-mandated
13 procedural protections do not include a requirement that there be some evidence (or any other
14 amount of evidence) to support the parole denial, the petition must be denied.

15 A certificate of appealability will not issue because petitioner has not made "a substantial
16 showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). This is not a case in
17 which "reasonable jurists would find the district court’s assessment of the constitutional claims
18 debatable or wrong." Slack v. McDaniel, 529 U.S. 473, 484 (2000).

19 For the foregoing reasons, the petition for writ of habeas corpus is DENIED. The clerk
20 shall close the file.

21 IT IS SO ORDERED.

22 DATED: January 26, 2011



SUSAN ILLSTON
United States District Judge