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

ARNOLD LEYARD,)	No. C 11-0447 JSW (PR)
)	
Petitioner,)	ORDER OF DISMISSAL
)	
vs.)	
)	
ARNOLD SCHWARZENEGGER,)	
Warden,)	
)	
Respondent.)	

INTRODUCTION

Petitioner, a prisoner of the State of California, currently incarcerated at the California Training Facility, has filed a habeas corpus petition pursuant to 28 U.S.C. § 2254 challenging the decision of the Governor of California to deny him parole in 2009. This order dismisses the petition for failing to state a cognizable claim for federal habeas relief.

DISCUSSION

I. Standard of Review

This court may entertain a petition for a 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).

1 It shall “award the writ or issue an order directing the respondent to show cause
2 why the writ should not be granted, unless it appears from the application that the
3 applicant or person detained is not entitled thereto.” *Id.* § 2243.

4 **II. Legal Claims**

5 Petitioner’s claims argue that the denial of parole violated his right to due process
6 because it was not supported by sufficient evidence of his current dangerousness. For
7 purposes of federal habeas review, a California prisoner is entitled to only “minimal”
8 procedural protections in connection with a parole suitability determination. *Swarthout v*
9 *Cooke*, No 10-333, slip op. at 4-5 (U.S. Jan. 24, 2011). The procedural protections to
10 which the prisoner is entitled under the Due Process Clause of the Fourteenth Amendment
11 to the U.S. Constitution are limited to an opportunity to be heard and a statement of the
12 reasons why parole was denied. *Id.* at 4-5. The parole hearing transcript submitted with
13 the petition makes it clear that Petitioner received an opportunity to be heard and a
14 statement of the reasons parole was denied. The Constitution does not require more. *Id.*
15 at 5. The Court explained that no Supreme Court case “supports converting California’s
16 ‘some evidence’ rule into a substantive federal requirement.” *Id.* It is simply irrelevant in
17 federal habeas review “whether California’s ‘some evidence’ rule of judicial review (a
18 procedure beyond what the Constitution demands) was correctly applied.” *Id.* at 6. In
19 light of the Supreme Court’s determination that due process does not require that there be
20 any amount of evidence to support the parole denial, the petition fails to state a cognizable
21 claim for relief.

22 **CONCLUSION**

23 For the foregoing reasons, the petition for a writ of habeas corpus is **DISMISSED**
24 for failure to state a cognizable claim for relief.


25 Rule 11(a) of the Rules Governing Section 2254 Cases now requires a district
26 court to rule on whether a Petitioner is entitled to a certificate of appealability in the same
27 order in which the petition is decided. Petitioner has failed to make a substantial showing
28

1 that his claims amounted to a denial of his constitutional rights or demonstrate that a
2 reasonable jurist would find this Court's denial of his claim debatable or wrong. *Slack v.*
3 *McDaniel*, 529 U.S. 473, 484 (2000). Consequently, no certificate of appealability is
4 warranted in this case

5 The Clerk shall enter judgment and close the file.

6 IT IS SO ORDERED.

7 DATED: February 15, 2011

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9 _____
10 JEFFREY S. WHITE
11 United States District Judge
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1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA
4

5 ARNOLD LEYARD,
6 Plaintiff,
7

Case Number: CV11-00447 JSW

CERTIFICATE OF SERVICE

8 v.

9 ARNOLD SCHWARZENNEGER et al,
10 Defendant.
_____ /

11 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
12 Court, Northern District of California.

13 That on February 15, 2011, I SERVED a true and correct copy(ies) of the attached, by placing
14 said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by
15 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office
16 delivery receptacle located in the Clerk's office.

17 Arnold Ledyard
18 D-70594
19 CTF Central
20 P.O. Box 689
21 Soledad, CA 93960

22 Dated: February 15, 2011

Jennifer Ottolini
Richard W. Wieking, Clerk
By: Jennifer Ottolini, Deputy Clerk

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