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MAY 06 2011
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT,
NORTHERN DISTRICT OF CALIFORNIA

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

MARTIN SALGADO,
Petitioner,
vs.
RANDY GROUNDS, Warden,
Respondent.

No. C 11-1910 JSW (PR)
ORDER OF DISMISSAL

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 California Board of Parole Hearings to deny him parole. 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 first three claims argue that the denial of parole violated his right to
6 due process because there was not sufficient reliable evidence that he would be a danger
7 to the public if released. For purposes of federal habeas review, the federal constitutional
8 right to due process entitles a California prisoner to only “minimal” procedural
9 protections in connection with a parole suitability determination. *Swarthout v Cooke*,
10 131 S.Ct. 859, 863 (2011). The procedural protections to which the prisoner is entitled
11 under the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution are
12 limited to an opportunity to be heard and a statement of the reasons why parole was
13 denied. *Id.* at 862. Petitioner does not dispute that he received an opportunity to be
14 heard and a statement of the reasons parole was denied. The Constitution does not
15 require more. *Id.* The Court explained that no Supreme Court case “supports converting
16 California’s ‘some evidence’ rule into a substantive federal requirement.” *Id.* It is simply
17 irrelevant in federal habeas review “whether California’s ‘some evidence’ rule of judicial
18 review (a procedure beyond what the Constitution demands) was correctly applied.” *Id.*
19 at 863. In light of the Supreme Court’s determination that due process does not require
20 that there be any amount of evidence to support the parole denial, the first three claims in
21 the petition do not to state a cognizable basis for federal habeas relief.

22 In his fourth claim, Petitioner argues that California Proposition 9, the “Victim’s
23 Bill of Rights Act,” also known as “Marsy’s Law,” which passed in 2008 and reduces the
24 frequency of his parole hearing, violates the Ex Post Facto Clause. A law reducing the
25 number of mandatory parole reviews is “saved” from violating the Ex Post Facto Clause
26 if the law retains discretionary parole reviews because the risk of increased punishment
27 under these circumstances is only speculative. *Scott v. Baldwin*, 225 F.3d 1020, 1021-23
28

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA
4

5 MARTIN SALGADO,
6 Plaintiff,
7

Case Number: CV11-01910 JSW

CERTIFICATE OF SERVICE

8 v.


9 RANDY GROUND 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 May 6, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said
14 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing
15 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery
16 receptacle located in the Clerk's office.

17 Martin Salgado
18 D97619
19 P.O. Box 689
20 Soledad, CA 93960

Dated: May 6, 2011


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