

United States District Court  
For the Northern District of California

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

LORENZO SMITH,

Petitioner,

v.

MATTHEW CATE, Secretary of the  
California Department of  
Corrections and Rehabilitation,

Respondent.

No. C-11-5652 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 a writ of habeas  
corpus pursuant to 28 U.S.C. § 2254 in which he claimed that his due  
process rights were violated when the Board of Parole Hearings  
("BPH") found him not suitable for parole on May 7, 2009, and when  
the BPH applied the current version of Cal. Penal Code  
§ 3041.5(b)(3) in scheduling Petitioner's next parole hearing.  
Recent decisions from the U.S. Supreme Court and the Ninth Circuit  
Court of Appeals require that this petition be summarily denied.

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2 A "federal court may issue a writ of habeas corpus to a  
3 state prisoner 'only on the ground that he is in custody in  
4 violation of the Constitution or laws or treaties of the United  
5 States.'" Swarthout v. Cooke, 131 S. Ct. 859, 861 (2011) (per  
6 curiam) (citations omitted).

7 Petitioner's first claim relates to the denial of parole  
8 on May 7, 2009. He argues that there was insufficient evidence for  
9 the parole board to conclude that he lacked insight and remorse  
10 (Doc. #1 at 21), that the denial of parole discriminated against him  
11 solely based on his developmental handicap (Doc. #1 at 25), that the  
12 parole board arbitrarily and capriciously excluded relevant evidence  
13 from his board hearing (Doc. #1 at 26), that he was provided  
14 ineffective assistance of counsel at his parole hearing (Doc. #1 at  
15 29), and that the denial of parole was not based on sound reasoning  
16 and some evidence (Doc. #1 at 29).

17 In 2011, the Supreme Court held that, for purposes of  
18 federal habeas review, a California prisoner is entitled to only  
19 "minimal" procedural protections in connection with a parole  
20 suitability determination. The procedural protections to which the  
21 prisoner is entitled under the Due Process Clause of the Fourteenth  
22 Amendment are limited to an opportunity to be heard and a statement  
23 of the reasons why parole was denied. Swarthout, 131 S. Ct. at 862.  
24 The Court explained that no Supreme Court case "supports converting  
25 California's 'some evidence' rule into a substantive federal  
26 requirement," and the Ninth Circuit erred in holding otherwise. Id.  
27 at 862 & 863.

1           In light of the Supreme Court's determination that the  
2 constitutionally-mandated procedural protections do not include a  
3 requirement that there be some evidence (or any other amount of  
4 evidence) to support the parole denial, Petitioner's claim for  
5 habeas relief based on the parole denial is without merit.  
6 Petitioner was provided an opportunity to be heard at his May 7,  
7 2009 hearing and a statement of the reasons why parole was denied,  
8 see Doc. #1, Exh. C, and has therefore received the procedural  
9 protected required by the Due Process Clause of the Fourteenth  
10 Amendment.

11           Petitioner's second claim is that the BPH violated his  
12 rights to due process by scheduling his next parole hearing in  
13 accordance with the current version of Cal. Penal Code §  
14 3041.5(b)(3). Petitioner was sentenced in 1982. Doc. #1 at 5. At  
15 that time, Section 3041.5(b)(2) provided that parole hearings were  
16 to be held annually, with deferrals of two or five years allowed  
17 under certain circumstances. See Cal. Penal Code § 3041.5(b)(2)  
18 (2008). In 2008, Proposition 9 significantly amended Section  
19 3041.5(b) and changed the law governing deferral periods. The  
20 default deferral period was increased from one year to fifteen  
21 years, the minimum deferral period was increased from one year to  
22 three years, and the maximum deferral period was increased from five  
23 years to fifteen years. See Cal. Penal Code § 3041.5(b)(3). At the  
24 May 7, 2009 parole hearing, BPH decided on a ten-year denial of  
25 parole for Petitioner. Doc. #1, Exh. C at 108. Petitioner argues  
26 that the application of the amended Section 3041.5(b)(3) in  
27 scheduling his next parole hearing violates the Ex Post Facto Clause  
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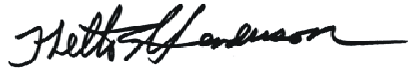


1 U.S. 473, 484 (2000).

2 The Clerk is directed to terminate any pending motions as  
3 moot and close the file.

4 IT IS SO ORDERED.

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6 DATED 04/10/2012

  
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THELTON E. HENDERSON  
United States District Judge

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