

FILED

DEC 21 2011

**RICHARD W. WIERING
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

WENDELL JAMES,

 Petitioner,

vs.

S. SALINAS, Warden,

 Respondent.

No. C 11-6304 JSW (PR)

**ORDER OF DISMISSAL; GRANTING
LEAVE TO PROCEED IN FORMA
PAUPERIS**

(Docket No. 2)

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 a decision by the 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

Petitioner claims that the denial of parole violated his right to due process because it was not supported by sufficient evidence that he would present a danger to society if released. The United States Supreme Court has held that a California prisoner is entitled to only "minimal" procedural protections in connection with a parole suitability determination. *Swarthout v Cooke*, 131 S.Ct. 859, 863 (2011). The procedural

1 protections to which the prisoner is entitled under the Due Process Clause of the
2 Fourteenth Amendment to the U.S. Constitution are limited to an opportunity to be heard
3 and a statement of the reasons why parole was denied. *Id.* at 862. The transcript of the
4 parole hearing shows that Petitioner received an opportunity to be heard and a statement
5 of the reasons parole was denied. The Constitution does not require more. *Id.* The
6 Court in *Swarthout* explained that no Supreme Court case "supports converting
7 California's 'some evidence' rule into a substantive federal requirement." *Id.* It is
8 simply irrelevant in federal habeas review "whether California's 'some evidence' rule of
9 judicial review (a procedure beyond what the Constitution demands) was correctly
10 applied." *Id.* at 863. In light of the Supreme Court's determination that due process
11 does not require that there be any amount of evidence to support the parole denial,
12 Petitioner's claim that the Board's decision was not supported by sufficient evidence
13 fails to state a viable basis for federal habeas relief.

14 CONCLUSION

15 For the foregoing reasons, the petition for a writ of habeas corpus is DENIED.
16 Furthermore, Petitioner has failed to make a substantial showing that his claims
17 amounted to a denial of his constitutional rights and that a reasonable jurist would find
18 this Court's denial of his claim debatable or wrong. *Slack v. McDaniel*, 529 U.S. 473,
19 484 (2000). Consequently, no certificate of appealability is warranted in this case.

20 Leave to proceed in forma pauperis is GRANTED (docket number 2).

21 The Clerk shall enter judgment and close the file.

22 IT IS SO ORDERED.

23 DATED: DEC 21 2011

24 
25 JEFFREY S. WHITE
26 United States District Judge
27
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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

WENDELL LEE JAMES,
Plaintiff,

Case Number: CV11-06304 JSW
CERTIFICATE OF SERVICE

v.

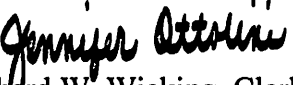
S M SALINAS et al,
Defendant.

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

That on December 21, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Wendell L. James E-01858
P O Box 600
L-342 Low
Tracy, CA 95378-0600

Dated: December 21, 2011


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