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

JERRYALL JEROME CULLER,

No. C 17-6265 WHA (PR)

Petitioner,

ORDER OF DISMISSAL

v.

(Docket No. 2)

RON DAVIS, Warden,

Respondent.

INTRODUCTION

Petitioner, a California prisoner proceeding pro se, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. 2254. The petition challenges the denial of parole by the California Board of Parole Hearings (“Board”). The application to proceed in forma pauperis is

GRANTED.

ANALYSIS

A. STANDARD OF REVIEW

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); *Rose v. Hodges*, 423 U.S. 19, 21 (1975). Habeas corpus petitions must meet heightened pleading requirements. *McFarland v. Scott*, 512 U.S. 849, 856 (1994). An application for a federal writ of habeas corpus filed by a prisoner who is in state custody pursuant to a judgment of a state court must “specify all the grounds for relief which are available to the petitioner ... and shall set

1 forth in summary form the facts supporting each of the grounds thus specified.” Rule 2(c) of the
2 Rules Governing Section 2254 Cases, 28 U.S.C. foll. 2254. “[N]otice’ pleading is not
3 sufficient, for the petition is expected to state facts that point to a ‘real possibility of
4 constitutional error.”” Rule 4 Advisory Committee Notes (quoting *Aubut v. Maine*, 431 F.2d
5 688, 689 (1st Cir. 1970)).

6 **B. LEGAL CLAIMS**

7 Petitioner claims that the denial of parole amounts to re-sentencing him to a new term,
8 He contends that the Board violated his right to due process by relying on false conclusions
9 about his mental state, a preponderance of the evidence standard, its own self-interests,
10 insufficient evidence of his being a threat to society, and a no-parole policy. For purposes of
11 federal habeas review, a California prisoner is entitled to only “minimal” procedural protections
12 in connection with a parole suitability determination. *Swarthout v Cooke*, 131 S.Ct. 859, 863
13 (2011). The procedural protections to which the prisoner is entitled under the Due Process
14 Clause of the Fourteenth Amendment to the U.S. Constitution are limited to an opportunity to
15 be heard and a statement of the reasons why parole was denied. *Id.* at 862. The constitution
16 does not require more. *Ibid.* The court in *Swarthout* explained that no Supreme Court case
17 “supports converting California’s ‘some evidence’ rule into a substantive federal requirement.”
18 *Ibid.* It is simply irrelevant in federal habeas review "whether California's 'some evidence' rule
19 of judicial review (a procedure beyond what the Constitution demands) was correctly applied."
20 *Id.* at 863. As the Supreme Court has determined that the federal guarantee of due process does
21 not require any amount of evidence to support the parole denial, and petitioner received the
22 procedural guarantees of a hearing and statement of reasons for the denial, his claims fail to
23 establish grounds for habeas relief.

24 **CONCLUSION**

25 In light of the foregoing, the petition for a writ of habeas corpus is **DISMISSED**.

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

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jurist would find this court's denial of his claim debatable or wrong. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Consequently, no certificate of appealability is warranted in this case.

The clerk shall enter judgment and close the file.

IT IS SO ORDERED.

Dated: December 4, 2017.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE