

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

PAUL ALBERT GUARDADO,  
Petitioner,

v.

MARGARITA PEREZ, et al.,  
Respondents.

No. 05-00194 CW

ORDER DENYING  
PETITIONER'S  
MOTION TO  
RECONSIDER AND  
VACATING JUDGMENT

PAUL ALBERT GUARDADO,  
Petitioner,

v.

J. DAVIS, Chairman, California Board  
of Parole Hearings, et al.,  
Respondents.

No. 08-003268 CW

ORDER VACATING  
STAY AND DENYING  
PETITION

In case number C 05-0194 CW, Petitioner Paul Albert Guardado, a state prisoner, files an emergency motion for reconsideration, challenging the Governor's July 23, 2009 decision reversing the June 23, 2009 decision of the Board of Parole Hearings (BPH) granting him a parole date. Respondents oppose the motion and Petitioner has filed a reply. In case number C 08-3268 CW, Respondents file a motion to dismiss the petition. Petitioner has filed a letter requesting the Court to stay ruling on Respondents' motion to dismiss until it has considered his motion for reconsideration in case C 05-0194 CW. The matters were taken under submission and decided on the papers. Having considered all the

1 papers filed by the parties, the Court denies Petitioner's motion  
2 for reconsideration in case number C 05-0194 CW and grants  
3 Respondent's motion to dismiss the petition in case number C 08-  
4 3268 CW. The Court denies certificates of appealability in both  
5 cases.

6 BACKGROUND

7 I. Case Number C 05-0194 CW

8 Petitioner filed several petitions for habeas corpus relief  
9 challenging BPH's decisions finding him unsuitable for parole.

10 These petitions were consolidated in the instant action. On April  
11 9, 2008, the Court issued an Order Granting Petition for Writ of  
12 Habeas Corpus, invalidating BPH's 2006 decision denying parole.

13 The order was based on BPH's failure to cite some evidence that  
14 Petitioner would be a danger to the public if released. Judgment  
15 was entered in favor of Petitioner on the same day. During 2009,  
16 Petitioner filed several motions to enforce the judgment, which the  
17 Court granted. On June 23, 2009, BPH conducted a date calculation  
18 hearing and set a release date for Petitioner. On July 23, 2009,  
19 the Governor reversed BPH's June 23, 2009 decision on the ground  
20 that Petitioner's release would pose an unreasonable risk to public  
21 safety. On April 25, 2011, the Ninth Circuit reversed this Court's  
22 April 9, 2008 order granting habeas relief, citing Swarthout v.

23 Cooke, 131 S. Ct. 859, 863 (2011), in which the United States  
24 Supreme Court "held that reviewing California's 'some evidence'  
25 standard 'is no part of the Ninth Circuit's business'" and that the  
26 Constitution "affords parole applicants only 'minimal' due process:  
27 an opportunity to be heard and a statement of reasons why parole

1 was denied." Guardado v. Perez, No. 09-17832 (9th Cir. April 25,  
2 2011). On May 17, 2011, the Ninth Circuit issued its mandate.

3 II. Case Number C 08-3268 CW

4 In this case, Petitioner filed a petition for writ of habeas  
5 corpus challenging BPH's September 25, 2007 decision that he was  
6 unsuitable for parole. On January 20, 2010, the Court stayed this  
7 petition because Respondents' appeal of the Court's order granting  
8 habeas relief in case number C 05-0194 CW was pending before the  
9 Ninth Circuit and, if the Ninth Circuit affirmed that order, the  
10 2008 petition would become moot.

11 DISCUSSION

12 I. Motion for Reconsideration in C 05-0194 CW

13 Petitioner argues that Cooke's holding, that federal courts  
14 cannot review whether some evidence supported the state's decision  
15 that the prisoner would be a danger to the public if released, does  
16 not foreclose his procedural argument that the Governor was without  
17 authority to reverse BPH's June 23, 2009 decision setting a release  
18 date for him. Petitioner's efforts to circumvent the Supreme  
19 Court's ruling in Cooke are not persuasive.

20 In light of Cooke, the Court's April 9, 2008 Order and  
21 judgment were erroneous and were correctly reversed by the Ninth  
22 Circuit. Likewise, in light of Cooke, the Court's subsequent  
23 orders enforcing the judgment were in error, and BPH's June 23,  
24 2009 decision setting a release date pursuant to those orders was  
25 erroneous. Therefore, whether the Governor acted without authority  
26 to reverse BPH's June 23, 2009 decision is moot, given that BPH  
27 would not have ordered Petitioner's release but for this Court's

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1 orders.

2 Therefore, the Court denies Petitioner's motion for  
3 reconsideration. The April 9, 2008 judgment is vacated. An  
4 amended judgment denying the petition will be entered separately.

5 II. Motion to Dismiss in C 08-3268 CW

6 The Court stayed the petition in case C 08-3268 CW prior to  
7 the Supreme Court's decision in Cooke, which foreclosed federal  
8 review of whether the state's parole denial was based on some  
9 evidence of the prisoner's dangerousness. Petitioner's petition  
10 raises the same claim, that BPH found him unsuitable for parole  
11 without some evidence that he would be a danger to the public if  
12 released. Because the Court cannot grant relief on such a claim,  
13 the stay of the petition is vacated and the petition is denied.  
14 Judgment shall be entered separately.

15 III. Certificates of Appealability

16 The Court must rule on a certificate of appealability. See  
17 Rule 11(a) of the Rules Governing § 2254 Cases, 28 U.S.C. foll.  
18 § 2254 (requiring district court to rule on certificate of  
19 appealability in same order that denies petition). A certificate  
20 of appealability should be granted "only if the applicant has made  
21 a substantial showing of the denial of a constitutional right." 28  
22 U.S.C. § 2253(c)(2). The Court finds that, in each case,  
23 Petitioner has not made a sufficient showing of the denial of a  
24 constitutional right to justify a certificate of appealability.

25 CONCLUSION

26 For the foregoing reasons, Petitioner's motion for  
27 reconsideration in case number C 05-0194 CW is denied and the April

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1 9, 2008 judgment is vacated. An amended judgment denying the  
2 petition will be issued separately. The stay in case number C 08-  
3 3268 CW is vacated and the petition is denied. A judgment shall be  
4 issued separately. Certificates of appealability are denied in  
5 both cases.

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7 IT IS SO ORDERED.

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9 Dated: 10/12/2011



CLAUDIA WILKEN  
United States District Judge

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