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

JEFFREY HAMMONS,

Petitioner,

v.

B. CURRY,

Respondent.

) No. C 07-05098 SBA (PR)

) **ORDER DENYING PETITION FOR**
) **WRIT OF HABEAS CORPUS**

INTRODUCTION

Petitioner Jeffrey Hammons, an inmate at the Correctional Training Facility in Soledad, California, filed this pro se petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254, in which he challenges the denial of parole by the California Board of Parole Hearings (BPH) in 2005. The matter is now submitted for the Court's consideration of the merits of the petition. For the reasons discussed below, the petition is DENIED.

PROCEDURAL BACKGROUND

In 1992, Petitioner was convicted by a jury in San Diego County Superior Court of second-degree murder, and an enhancement for the use of a gun was found true. (Resp't Ex. 2.) The trial court sentenced him to a state prison term of sixteen years to life. (Id.) On October 4, 2005, the BPH conducted Petitioner's second parole consideration hearing, after which it found that Petitioner was not suitable for parole because he would pose an unreasonable risk of danger to society or a threat to public safety if released from prison. (Resp't Ex. 4 at 55.)

Petitioner filed a habeas petition in the San Diego County Superior Court, which was denied on July 25, 2006. (Resp't Exs. 5 & 6.) Thereafter, Petitioner filed a habeas petition in the state appellate court, which was denied on November 7, 2006. (Resp't Exs. 7 & 8.) Petitioner filed a petition for review in the state supreme court, which was denied on February 14, 2007. (Resp't Exs. 9 & 10.)

Petitioner filed the instant petition on June 12, 2007, in the United States District Court for

1 the Central District of California. The petition was thereafter transferred to this court. Petitioner
2 makes the following claims: (1) the BPH violated his right to due process by continuing to rely on
3 his commitment offense and by improperly finding him to be a threat to public safety; (2) the BPH
4 failed to consider Petitioner's current character at the hearing; and (3) the BPH's decision was based
5 on its bias against granting parole. Respondent was ordered to show cause why the petition should
6 not be granted based on Petitioner's claims. Respondent has filed an answer, along with a
7 supporting memorandum and exhibits, and Petitioner has filed a traverse.

8 STANDARD OF REVIEW

9 **I. AEDPA**

10 Under the Antiterrorism and Effective Death Penalty Act (AEDPA), a district court may
11 grant a petition challenging a state conviction or sentence on the basis of a claim that was
12 "adjudicated on the merits" in state court only if the state court's adjudication of the claim:
13 "(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly
14 established Federal law, as determined by the Supreme Court of the United States; or (2) resulted in
15 a decision that was based on an unreasonable determination of the facts in light of the evidence
16 presented in the State court proceeding." 28 U.S.C. § 2254(d). Section 2254(d) applies to a habeas
17 petition from a state prisoner challenging the denial of parole. See Sass v. Cal. Bd. of Prison Terms,
18 461 F.3d 1123, 1126-27 (9th Cir. 2006).

19 A state court has "adjudicated" a petitioner's constitutional claim "on the merits" for purposes
20 of § 2254(d) when it has decided the petitioner's right to post-conviction relief on the basis of the
21 substance of the constitutional claim advanced, rather than denying the claim on the basis of a
22 procedural or other rule precluding state court review on the merits. Lambert v. Blodgett, 393 F.3d
23 943, 969 (9th Cir. 2004). It is error for a federal court to review de novo a claim that was
24 adjudicated on the merits in state court. See Price v. Vincent, 538 U.S. 634, 638-43 (2003).

25 **A. Section 2254(d)(1)**

26 Challenges to purely legal questions resolved by the state court are reviewed under
27 § 2254(d)(1), under which a state prisoner may obtain habeas relief with respect to a claim
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1 adjudicated on the merits in state court only if the state court adjudication resulted in a decision that
2 was "contrary to" or "involved an unreasonable application of" "clearly established Federal law, as
3 determined by the Supreme Court of the United States." Williams (Terry) v. Taylor, 529 U.S. 362,
4 402-04, 409 (2000). While the "contrary to" and "unreasonable application" clauses have
5 independent meaning, see id. at 404-05, they often overlap, which may necessitate examining a
6 petitioner's allegations against both standards. See Van Tran v. Lindsey, 212 F.3d 1143, 1149-50
7 (9th Cir. 2000), overruled on other grounds; Lockyer v. Andrade, 538 U.S. 63, 70-73 (2003).

8
9 **1. Clearly Established Federal Law**

10 "Clearly established federal law, as determined by the Supreme Court of the United States"
11 refers to "the holdings, as opposed to the dicta, of [the Supreme] Court's decisions as of the time of
12 the relevant state-court decision." Williams, 529 U.S. at 412. "Section 2254(d)(1) restricts the
13 source of clearly established law to [the Supreme] Court's jurisprudence." Id. "A federal court may
14 not overrule a state court for simply holding a view different from its own, when the precedent from
15 [the Supreme] Court is, at best, ambiguous." Mitchell v. Esparza, 540 U.S. 12, 17 (2003). If there is
16 no Supreme Court precedent that controls on the legal issue raised by a petitioner in state court, the
17 state court's decision cannot be contrary to, or an unreasonable application of, clearly-established
18 federal law. See, e.g., Stevenson v. Lewis, 384 F.3d 1069, 1071 (9th Cir. 2004).

19 The fact that Supreme Court law sets forth a fact-intensive inquiry to determine whether
20 constitutional rights were violated "obviates neither the clarity of the rule nor the extent to which the
21 rule must be seen as 'established'" by the Supreme Court. Williams, 529 U.S. at 391. There are,
22 however, areas in which the Supreme Court has not established a clear or consistent path for courts
23 to follow in determining whether a particular event violates a constitutional right; in such an area, it
24 may be that only the general principle can be regarded as "clearly established." Andrade, 538 U.S.
25 at 64-65. When only the general principle is clearly established, it is the only law amenable to the
26 "contrary to" or "unreasonable application of" framework. See id. at 73.

27 Circuit decisions may still be relevant as persuasive authority to determine whether a
28 particular state court holding is an "unreasonable application" of Supreme Court precedent or to

1 assess what law is "clearly established." Clark v. Murphy, 331 F.3d 1062, 1070-71 (9th Cir.), cert.
2 denied, 540 U.S. 968 (2003); Duhaime v. Ducharme, 200 F.3d 597, 600 (9th Cir. 1999).

3 **2. "Contrary to"**

4 "Under the 'contrary to' clause, a federal habeas court may grant the writ if the state court
5 arrives at a conclusion opposite to that reached by [the Supreme] Court on a question of law or if the
6 state court decides a case differently than [the Supreme] Court has on a set of materially
7 indistinguishable facts." Williams, 529 U.S. at 413. A "run-of-the-mill state-court decision" that
8 correctly identifies the controlling Supreme Court framework and applies it to the facts of a
9 prisoner's case "would not fit comfortably within § 2254(d)(1)'s 'contrary to' clause." Id. at 406.
10 Such a case should be analyzed under the "unreasonable application" prong of § 2254(d). See
11 Weighall v. Middle, 215 F.3d 1058, 1062 (9th Cir. 2000).

12 **3. "Unreasonable Application"**

13 "Under the 'unreasonable application' clause, a federal habeas court may grant the writ if the
14 state court identifies the correct governing legal principle from [the Supreme] Court's decisions but
15 unreasonably applies that principle to the facts of the prisoner's case." Williams, 529 U.S. at 413.

16 "[A] federal habeas court may not issue the writ simply because that court concludes in its
17 independent judgment that the relevant state-court decision applied clearly established federal law
18 erroneously or incorrectly. Rather, that application must also be unreasonable." Id. at 411; accord
19 Middleton v. McNeil, 541 U.S. 433, 436 (2004) (per curiam) (challenge to state court's application
20 of governing federal law must be not only erroneous, but objectively unreasonable); Woodford v.
21 Visciotti, 537 U.S. 19, 25 (2002) (per curiam) ("unreasonable" application of law is not equivalent to
22 "incorrect" application of law).

23 Evaluating whether a rule application was unreasonable requires considering the relevant
24 rule's specificity; if a legal rule is specific, the range of reasonable judgment may be narrow; if it is
25 more general, the state courts have more leeway. Yarborough v. Alvarado, 541 U.S. 652, 664
26 (2004). Whether the state court's decision was unreasonable must be assessed in light of the record
27 that court had before it. Holland v. Jackson, 542 U.S. 649, 651 (2004) (per curiam).

1 The "objectively unreasonable" standard is not a clear error standard. Andrade, 538 U.S. at
2 75-76 (rejecting Van Tran's use of "clear error" standard); Clark, 331 F.3d at 1067-69
3 (acknowledging the overruling of Van Tran on this point). After Andrade, "[t]he writ may not issue
4 simply because, in our determination, a state court's application of federal law was erroneous, clearly
5 or otherwise. While the 'objectively unreasonable' standard is not self-explanatory, at a minimum it
6 denotes a greater degree of deference to the state courts than [the Ninth Circuit] ha[s] previously
7 afforded them." Id. In examining whether the state court decision was unreasonable, the inquiry
8 may require analysis of the state court's method as well as its result. Nunes v. Mueller, 350 F.3d
9 1045, 1054 (9th Cir. 2003).

10 **B. Section 2254(d)(2)**

11 A federal habeas court may grant the writ if it concludes that the state court's adjudication of
12 the claim "resulted in a decision that was based on an unreasonable determination of the facts in
13 light of the evidence presented in the State court proceeding." 28 U.S.C. § 2254(d)(2). An
14 unreasonable determination of the facts occurs where the state court fails to consider and weigh
15 highly probative, relevant evidence, central to the petitioner's claim, that was properly presented and
16 made part of the state court record. Taylor v. Maddox, 366 F.3d 992, 1005 (9th Cir. 2004). A
17 district court must presume correct any determination of a factual issue made by a state court unless
18 the petitioner rebuts the presumption of correctness by clear and convincing evidence. 28 U.S.C. §
19 2254(e)(1).

20 **II. California Law Governing Parole for Murderers**

21 A BPH panel meets with an inmate one year before the prisoner's minimum eligible release
22 date "and shall normally set a parole release date The release date shall be set in a manner that
23 will provide uniform terms for offenses of similar gravity and magnitude in respect to their threat to
24 the public, and that will comply with the sentencing rules that the Judicial Council may issue and
25 any sentencing information relevant to the setting of parole release dates." Cal. Pen. Code §
26 3041(a). Significantly, that statute also provides: The panel shall set a release date,
27 unless it determines that the gravity of the current convicted offense or offenses,
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1 or the timing and gravity of current or past convicted offense or offenses, is such
2 that consideration of the public safety requires a more lengthy period of
3 incarceration for this individual, and that a parole date, therefore, cannot be fixed
4 at this meeting.

5 Id. § 3041(b).

6 One of the implementing regulations, Title 15 of the California Code of Regulations, section
7 2401 provides: "A parole date shall be denied if the prisoner is found unsuitable for parole under
8 Section 2402(c). A parole date shall be set if the prisoner is found suitable for parole under Section
9 2402(d). A parole date set under this article shall be set in a manner that provides uniform terms for
10 offenses of similar gravity and magnitude with respect to the threat to the public." The regulation
11 also provides that "[t]he panel shall first determine whether the life prisoner is suitable for release on
12 parole. Regardless of the length of time served, a life prisoner shall be found unsuitable for and
13 denied parole if in the judgment of the panel the prisoner will pose an unreasonable risk of danger to
14 society if released from prison." 15 Cal. Code Regs. § 2402(a).

15 In making its determination, the parole board may consider "[a]ll relevant, reliable
16 information available," including,

17 the circumstances of the prisoner's social history; past and present mental state;
18 past criminal history, including involvement in other criminal misconduct which
19 is reliably documented; the base and other commitment offenses, including
20 behavior before, during and after the crime; past and present attitude toward the
21 crime; any conditions of treatment or control, including the use of special
22 conditions under which the prisoner may safely be released to the community;
23 and any other information which bears on the prisoner's suitability for release.
24 Circumstances which taken alone may not firmly establish unsuitability for parole
25 may contribute to a pattern which results in finding of unsuitability.

26 Id. § 2402(b).

27 Circumstances tending to show unsuitability for parole include the nature of the commitment
28 offense, and consideration of whether "[t]he prisoner committed the offense in an especially heinous,
atrocious or cruel manner." Id. § 2281(c). This includes consideration of the number of victims,
whether "[t]he offense was carried out in a dispassionate and calculated manner," whether the victim
was "abused, defiled or mutilated during or after the offense," whether "[t]he offense was carried out
in a manner which demonstrates an exceptionally callous disregard for human suffering," and

1 whether "[t]he motive for the crime is inexplicable or very trivial in relation to the offense." Id.
2 Other circumstances tending to show unsuitability for parole are a previous record of violence, an
3 unstable social history, previous sadistic sexual offenses, a history of severe mental health problems
4 related to the offense, and serious misconduct in prison or jail. See id.

5 Circumstances tending to support a finding of suitability for parole include no juvenile
6 record, a stable social history, signs of remorse, that the crime was committed as a result of
7 significant stress in the prisoner's life, a lack of criminal history, a reduced possibility of recidivism
8 due to the prisoner's present age, that the prisoner has made realistic plans for release or has
9 developed marketable skills that can be put to use upon release, and that the prisoner's institutional
10 activities indicate an enhanced ability to function within the law upon release. See id. § 2281(d).

11 The regulations also contain a matrix of suggested base terms that prisoners with
12 indeterminate sentences should serve before they are released on parole. The matrix provides three
13 choices of suggested "base terms" for several categories of crimes. See 15 Cal. Code Regs. § 2403.
14 If, as in Petitioner's case, the base offense is one count of first-degree murder with the use of a
15 dangerous weapon (firearm), the matrix of base terms ranges from a low of 29-31 years, to a high of
16 30-32 years, depending on some of the facts of the crime.¹ See id. § 2403(b). Although the matrix is
17 to be used to establish a base term, this occurs only once the prisoner has been found suitable for
18 parole. See id. § 2403(a).

19
20 The statutory scheme places individual suitability for parole above a prisoner's expectancy in
21 early setting of a fixed date designed to ensure term uniformity. In re Dannenberg, 34 Cal.4th 1061,
22 1070-71 (2005).

24
25 ¹ One axis of the matrix concerns the relationship between murderer and victim and the
26 other axis of the matrix concerns the circumstances of the murder. The choices on the axis for the
27 relationship of murderer and victim are "participating victim," "prior relationship," "no prior
28 relationship," and "threat to public order or murder for hire." The choices on the axis for the
circumstances of the murder are "indirect," "direct or victim contribution," "severe trauma," or
"torture." Each of the choices are further defined in the matrix. See CAL. CODE REGS. tit. 15,
§ 2403(b).

1 While subdivision (a) of section 3041 states that indeterminate life (i.e., life-
2 maximum) sentences should "normally" receive "uniform" parole dates for similar
3 crimes, subdivision (b) provides that this policy applies "*unless* [the Board]
4 determines" that a release date cannot presently be set because the particular
5 offender's crime and/or criminal history raise "*public safety*" concerns requiring
6 further indefinite incarceration. (Italics added.) Nothing in the statute states or
7 suggests that the Board must evaluate the case under standards of term uniformity
8 before exercising its authority to deny a parole date on the grounds the particular
9 offender's criminality presents a *continuing public danger*.

6 Id. at 1070 (emphasis, brackets and parenthesis in original). Indeed, the very regulation that
7 includes the matrix states that "[t]he panel shall set a base term for each life prisoner who is found
8 suitable for parole." 15 Cal. Code Regs. § 2403(a) (emphasis added). "[T]he Board, exercising its
9 traditional broad discretion, may protect public safety in each discrete case by considering the
10 dangerous implications of a life-maximum prisoner's crime individually." Dannenberg, 34 Cal. 4th
11 at 1071 (emphasis added).

12 The California Supreme Court's determination of state law is binding in this federal habeas
13 action. See Hicks v. Feiock, 485 U.S. 624, 629 (1988).

14 DISCUSSION

15 **I. Due Process**

16 "In analyzing the procedural safeguards owed to an inmate under the Due Process clause, [a
17 court] must look at two distinct elements: (1) a deprivation of a constitutionally protected liberty or
18 property interest, and (2) a denial of adequate procedural safeguards." Biggs v. Terhune, 334 F.3d
19 910, 913 (9th Cir. 2003). The second prong of this test is satisfied if (1) the inmate has been
20 afforded an opportunity to be heard and, if denied parole, informed of the reasons underlying the
21 decision and (2) "some evidence" supports the decision to grant or deny parole. See Sass, 461 F.3d
22 at 1129 (adopting some evidence standard for disciplinary hearings outlined in Superintendent v.
23 Hill, 472 U.S. 445, 454-55 (1985)).

24 **A. Protected Liberty Interest**

25 Respondent argues as an initial matter that Petitioner has no federally protected liberty
26 interest in parole. This argument has been rejected by the Ninth Circuit. See Sass v. Cal. Bd. of
27 Prison Terms, 461 F.3d 1123, 1125 (9th Cir. 2006) ("California inmates continue to have a liberty
28

1 interest in parole after In re Dannenberg."). Thus, under Sass, Petitioner was entitled to the
2 protections of due process at his 2005 parole suitability hearing.

3 **B. Opportunity to Be Heard and Reasons for Denial**

4 There is no dispute that Petitioner fully participated in his 2005 parole suitability hearing, as
5 evidenced by the transcript of that hearing. (Resp't Ex 4.) Throughout the hearing, Petitioner was
6 given the opportunity to make comments and/or objections in response to the BPH's statements,
7 clarify any misunderstandings and provide statements regarding his parole eligibility. (Id.) In
8 addition, the BPH laid out detailed reasons for denying Petitioner parole, which are discussed further
9 below. (Id.) Consequently, the record is clear that the BPH did not violate Petitioner's due process
10 right to have an opportunity to be heard and to be given the reasons for the denial of parole.

11 **C. "Some Evidence"**

12 Petitioner first two claims are that: (1) the BPH violated his right to due process by
13 continuing to rely on his commitment offense and by improperly finding him to be a threat to public
14 safety; (2) the BPH failed to consider Petitioner's current character in determining that he would be
15 a threat to public safety if released. The Court construes these claims to assert that the denial of
16 parole violated due process because there was not "some evidence" of his current threat to public
17 safety.

18 A parole board's decision satisfies the requirements of due process if "some evidence"
19 supports the decision. Sass, 461 F.3d at 1128-29. "To determine whether the some evidence
20 standard is met 'does not require examination of the entire record, independent assessment of the
21 credibility of witnesses, or weighing of the evidence. Instead, the relevant question is whether there
22 is any evidence in the record that could support the conclusion reached'" by the parole board. Id. at
23 1128 (quoting Hill, 472 U.S. at 455-56). The "some evidence standard is minimal, and assures that
24 'the record is not so devoid of evidence that the findings of the . . . board were without support or
25 otherwise arbitrary.'" Id. at 1129 (quoting Hill, 472 U.S. at 457).

26 It is now established under California law that the task of the BPH is to determine whether
27 the prisoner would be a danger to society if he or she were paroled. In. re Lawrence, 44 Cal. 4th
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1 1181 (2008). The constitutional “some evidence” requirement therefore is that there be some
2 evidence that the prisoner would be such a danger, not that there be some evidence of one or more of
3 the factors that the regulations list as factors to be considered in deciding whether to grant parole.
4 Id. at 1205-06.

5 In several cases the Ninth Circuit has discussed whether the “some evidence” standard can be
6 satisfied by evidence of the nature of the commitment offense and prior offenses. In Biggs, the court
7 explained that the some evidence standard may be considered in light of the Board’s decisions over
8 time. The court reasoned that “[t]he Parole Board’s decision is one of ‘equity’ and requires a careful
9 balancing and assessment of the factors considered . . . A continued reliance in the future on an
10 unchanging factor, the circumstance of the offense and conduct prior to imprisonment, runs contrary
11 to the rehabilitative goals espoused by the prison system and could result in a due process violation.”
12 334 F.3d at 915-17. Although the Biggs court upheld the initial denial of a parole release date based
13 solely on the nature of the crime and the prisoner’s conduct before incarceration, the court cautioned
14 that “[o]ver time, however, should Biggs continue to demonstrate exemplary behavior and evidence
15 of rehabilitation, denying him a parole date simply because of the nature of his offense would raise
16 serious questions involving his liberty interest.” Id. at 916.

17 The Sass court criticized the decision in Biggs: “Under AEDPA it is not our function to
18 speculate about how future parole hearings could proceed.” Sass, 461 F.3d at 1129. Sass
19 determined that it is not a due process violation per se if the Board determines parole suitability
20 based solely on the unchanging factors of the commitment offense and prior offenses. Id. (prisoner’s
21 commitment offenses in combination with prior offenses amounted to some evidence to support the
22 Board’s denial of parole). However, Sass does not dispute the argument in Biggs that, over time, a
23 commitment offense may be less probative of a prisoner’s current threat to the public safety.

24 The Ninth Circuit explained that all of the cases in which it previously held that denying
25 parole based solely on the commitment offense comported with due process were ones in which the
26 prisoner had not yet served the minimum years required by the sentence. Id. Also, noting that the
27 parole board in Sass and Irons appeared to give little or no weight to evidence of the prisoner’s
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1 rehabilitation, the Ninth Circuit stressed its hope that "the Board will come to recognize that in some
2 cases, indefinite detention based solely on an inmate's commitment offense, regardless of the extent
3 of his rehabilitation, will at some point violate due process, given the liberty interest in parole that
4 flows from relevant California statutes." Id. (citing Biggs, 334 F.3d at 917). Even so, the Ninth
5 Circuit has not set a standard as to when a complete reliance on unchanging circumstances would
6 amount to a due process violation.

7 That is not what happened here, however. In denying parole, the BPH cited the facts of the
8 commitment offense, the relatively trivial motive, Petitioner's disciplinary record in prison, his
9 insufficient participation in self-help programs, and inadequate parole plans. (Resp't Ex. 4 at 55-
10 60.) These are factors that "tend to indicate unsuitability for parole" under California regulations.
11 15 Cal. Code Regs. § 2402. The facts of the commitment offense certainly demonstrate a level of
12 dangerousness if released. Petitioner tried to beat up an armed man, chased him, and then shot and
13 killed him. (Id. at 7-9.) Petitioner then got into a car and drove away. (Resp't Ex. 8 at 2.)
14 Petitioner continued to engage in violence while in prison, receiving two serious disciplinary reports,
15 the last of which was in 1999, for mutual combat. (Resp't Ex. 4 at 57.) Moreover, Petitioner had
16 not participated in any anger management courses while in prison. (Id. at 57-60.) Given the central
17 role of uncontrolled anger in both the commitment offense as well as Petitioner's violent behavior in
18 prison, the BPH reasonably emphasized the importance of an anger management program to
19 Petitioner's rehabilitation. Finally, the BPH noted that Petitioner did not have concrete parole plans.
20 (Id. at 58-59.) The BPH did commend Petitioner for his service as a Marine, his lack of a criminal
21 or unstable social history, and his participation in Alcoholics Anonymous. The BPH could
22 reasonably conclude, however, that these positive factors were outweighed by the factors indicating
23 unsuitability for parole.
24

25 Consequently, the record of the 2005 parole hearing demonstrates at least "some evidence"
26 that Petitioner would pose a risk of harm to society if released and that parole should be denied.
27 Moreover, the concern expressed in Biggs, that after passage of enough time the facts of the
28 commitment offense would cease to amount to "some evidence" on its own, is not triggered here for

1 two reasons. First, the BPH did not deny parole solely because of the unchanging factor of the
2 nature of Petitioner's commitment offense, but also cited a number of other factors indicating
3 unsuitability. Second, this parole hearing was conducted fourteen years after the commitment
4 offense, before Petitioner had even reached his sentence's minimum term of sixteen years, which
5 was not enough time to trigger the concern raised in Biggs. Accordingly, the state court's rejection
6 of Petitioner's due process claim was not contrary to or an unreasonable application of federal law,
7 and Petitioner's claim is DENIED.

8 **D. Bias**

9 In his third claim, Petitioner argues that the BPH violated his right to due process by denying
10 parole because of an anti-parole bias. The record shows that the BPH reviewed the evidence
11 extensively and discussed it with Petitioner. (Resp. Ex. 4 at 1-61.) The BPH's decision explains the
12 specific facts it relied upon in finding him not suitable for parole. (Id. at 55-61.) Both of these
13 factors tend to negate the accusation that the denial of parole in this case was based on bias as
14 opposed to the particular facts of Petitioner's case, and Petitioner has not provided any evidence that
15 would show otherwise. The state courts' rejection of this claim was not contrary to, nor an
16 unreasonable application of, clearly-established Supreme Court authority, and the claim is DENIED.

17 **II. Certificate of Appealability**

18 The federal rules governing habeas cases brought by state prisoners have recently been
19 amended to require a district court that denies a habeas petition to grant or deny a certificate of
20 appealability (COA) in its ruling. See Rule 11(a), Rules Governing § 2254 Cases, 28 U.S.C. foll.
21 § 2254 (effective December 1, 2009). However, the Ninth Circuit has made clear that a state
22 prisoner challenging the BPT's administrative decision to deny a request for parole need not obtain a
23 certificate of appealability. See Rosas v. Nielsen, 428 F.3d 1229, 1232 (9th Cir. 2005).

24 Accordingly, any request for a COA is DENIED as unnecessary.

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CONCLUSION

For the foregoing reasons, the petition for a writ of habeas corpus is DENIED. In addition, any request for a COA is DENIED as unnecessary. The Clerk of the Court shall enter judgment in accordance with this Order, terminate all pending motions, and close the file.

IT IS SO ORDERED.

DATED: 3/8/10


SAUNDRA BROWN ARMSTRONG
United States District Judge

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

4 JEFFREY HAMMONS,

5 Plaintiff,

6 v.

7 B. CURRY, ET AL. et al,

8 Defendant.

Case Number: CV07-05098 SBA

CERTIFICATE OF SERVICE

9
10 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
11 Court, Northern District of California.

12 That on March 10, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said
13 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
14 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
15 located in the Clerk's office.

16 Jeffrey Hammons H-23227
17 California State Prison - San Quentin
18 San Quentin, CA 94964

19 Dated: March 10, 2010

Richard W. Wieking, Clerk
By: LISA R CLARK, Deputy Clerk