

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

FRANCISCO P. CASTILLO, JR.,

No. C 08-2343 CW (PR)

Petitioner,

v.

ORDER DENYING PETITION FOR WRIT
OF HABEAS CORPUS; DENYING
CERTIFICATE OF APPEALABILITY

BEN CURRY, Warden,

Respondent.

_____ /

Pro se Petitioner Francisco P. Castillo, Jr., seeks a writ of habeas corpus under 28 U.S.C. § 2254 challenging the June 27, 2007 decision of the California Board of Parole Hearings (BPH) denying him parole at his third parole suitability hearing. Doc. No. 1 at 11. Specifically, Petitioner argues he is entitled to federal habeas relief because there was no reliable evidence presented at Petitioner's parole suitability hearing that he posed a "current risk to public safety," and that the BPH did not give him the "individualized consideration" and applied a "blanket no-parole policy" in denying him a parole date, all of which violated his right to due process. Id. at 11; Doc. No. 12 at 3 (emphasis in

1 omitted).

2 The United States Supreme Court recently made clear that in the
3 context of a federal habeas challenge to the denial of parole, a
4 prisoner subject to a parole statute similar to California's
5 receives adequate process when the BPH allows him an opportunity to
6 be heard and provides him with a statement of the reasons why parole
7 was denied. Swarthout v. Cooke, No. 10-333, slip op. at 4-5 (U.S.
8 Jan. 24, 2011). Here, the record shows Petitioner received at least
9 this amount of process. The Constitution does not require more.
10 Id. at 5.

11 The Court also made clear that whether the BPH's decision was
12 supported by some evidence of current dangerousness is irrelevant in
13 federal habeas: "it is no federal concern . . . whether
14 California's 'some evidence' rule of judicial review (a procedure
15 beyond what the Constitution demands) was correctly applied."
16 Swarthout v. Cooke, slip op. at 6.

17 Accordingly, the instant federal Petition for a Writ of Habeas
18 corpus is DENIED.

19 Further, a Certificate of Appealability is DENIED. See Rule
20 11(a) of the Rules Governing Section 2254 Cases. Petitioner has not
21 made "a substantial showing of the denial of a constitutional
22 right." 28 U.S.C. § 2253(c)(2). Nor has Petitioner demonstrated
23 that "reasonable jurists would find the district court's assessment
24 of the constitutional claims debatable or wrong." Slack v.
25 McDaniel, 529 U.S. 473, 484 (2000). Petitioner may not appeal the
26 denial of a Certificate of Appealability in this Court but may seek
27

28

1 a certificate from the Court of Appeals under Rule 22 of the Federal
2 Rules of Appellate Procedure. See Rule 11(a) of the Rules Governing
3 Section 2254 Cases.

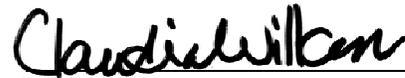
4 The Clerk shall terminate any pending motions as moot, enter
5 judgment in favor of Respondent and close the file.

6

7 IT IS SO ORDERED.

8

9 Dated: 2/7/2011



CLAUDIA WILKEN
United States District Judge

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

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

4 FRANCISCO P. CASTILLO JR,

5 Plaintiff,

6 v.

7 B. CURRY et al,

8 Defendant.

Case Number: CV08-02343 CW

CERTIFICATE OF SERVICE

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

11 That on February 7, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located
14 in the Clerk's office.

15 Francisco P. Castillo C-85768
16 Correctional Training Facility
17 C-329-Low
18 P.O. Box 689
19 Soledad, CA 93960

20 Dated: February 7, 2011

Richard W. Wieking, Clerk
By: Nikki Riley, Deputy Clerk