

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

NOEL VALDIVIA,

Petitioner,

vs.

ROBERT L. AYERS, Warden,

Respondent.

No. C 08-3225 PJH (PR)

**ORDER TO REOPEN CASE;
DENIAL OF HABEAS
PETITION AND DENIAL OF
CERTIFICATE OF
APPEALABILITY**

This is a habeas corpus case filed by a state prisoner pursuant to 28 U.S.C. 2254. The petition is directed to a denial of parole. This case was stayed as the Eastern District of California had granted a petition filed by petitioner seeking parole in an earlier case which was appealed to the Ninth Circuit and had been pending. The Ninth Circuit reversed the Eastern District's order granting parole in light of *Swarthout v. Cooke*, 131 S. Ct. 859 (2011). See *Valdivia v. Brown*, 08-15650.¹

BACKGROUND

In 1981 petitioner pled guilty in Los Angeles Superior Court to first degree murder. He received a sentence of twenty-five years to life in prison.

DISCUSSION

As grounds for federal habeas relief, petitioner asserts that: (1) there was not "some evidence" to support the denial of parole; (2) the Board violated his due process and Eighth Amendment rights by using characteristics of the offense both as grounds to deny parole and to not schedule another hearing for two years; (3) the Board's criteria for parole release are unconstitutionally vague; (4) the Board is not impartial; and (5) the denial was a

¹ It appears petitioner has since been paroled.

1 violation of his plea bargain.

2 On January 24, 2011, the United States Supreme Court issued *Swarthout v. Cooke*,
3 131 S. Ct. 859 (2011). The Supreme Court held that “[i]n the context of parole . . . the
4 procedures required [by the due process clause] are minimal . . . an opportunity to be heard
5 and . . . a statement of the reasons why parole was denied . . . [t]he Constitution . . . does
6 not require more.” *Swarthout v. Cooke*, 131 S. Ct. 859, 862 (2011). As long as the
7 petitioner received at least that much process, the federal court's habeas review is at an
8 end. *Id.* at 862. That is, there is no constitutional right to “individual consideration.”

9 Thus, petitioner’s claims involving the “some evidence” that the Board relied on or
10 the reliance on his commitment offense are not cognizable on federal habeas review.
11 Similarly, petitioner’s conclusory claims that the Board violated his due process rights or
12 their regulations are vague do not state a federal claim, as he has raised no arguments
13 concerning the basic procedures he is entitled to as described in *Swarthout*, and the court
14 cannot review the evidence relied upon by the Board. Petitioner has presented no support
15 for his allegation that the Board was biased, nor is there any merit to his claim that his plea
16 bargain was violated by the denial of parole. Petitioner was sentenced to twenty-five years
17 to life in prison, so only retained the possibility of parole. Petitioner's sentence of twenty-
18 five years with the possibility of parole carries no guaranteed parole date, and carries with it
19 the potential that he could serve the entire term. *See Pearson v. Muntz*, 639 F.3d 1185,
20 1187 (9th Cir. 2011) (explaining that prisoners serving indeterminate life prison sentences
21 [i.e., those whose life sentences do not include ‘without the possibility of parole’] may serve
22 up to life in prison, but may be considered for parole after serving minimum terms of
23 confinement). For all these reasons, the petition is denied.

24 CONCLUSION

25 1. The stay in this case is lifted and the case is **REOPENED**.

26 2. The petition is **DENIED**. Furthermore, because reasonable jurists would not find
27 the result here debatable given the clear controlling Supreme Court authority, a certificate
28 of appealability (“COA”) is **DENIED**. *See Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000)

(standard for COA). The clerk shall close the file.

IT IS SO ORDERED.

Dated: May 1, 2013.



PHYLLIS J. HAMILTON
United States District Judge

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