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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DANIEL PARTIDA,)	No. C 08-03751 CW (PR)
)	
Petitioner,)	ORDER DENYING PETITION FOR A
)	WRIT OF HABEAS CORPUS
v.)	
)	
BEN CURRY, Warden,)	
)	
Respondent.)	
_____)	

INTRODUCTION

This is a federal habeas corpus action filed pursuant to 28 U.S.C. § 2254 by a pro se state prisoner. For the reasons set forth below, the petition is DENIED.

BACKGROUND

In 1993, a Los Angeles County Superior Court jury convicted Petitioner of second degree murder, and he was sentenced to fifteen years to life in state prison. In 2005, the Board of Parole Hearings (Board) found Petitioner unsuitable for parole on grounds that the circumstances of the commitment offense and his criminal history indicate that he "would still pose an

1 unreasonable risk of danger to society and or a threat to public
2 safety if released from prison." (Pet., Ex. D (Parole Hearing
3 Transcript) at 84.) In response to the Board's decision,
4 Petitioner sought, but was denied, relief on state collateral
5 review. This federal habeas petition followed. As grounds for
6 federal habeas relief, Petitioner claims that (1) the Board
7 violated his right to due process because there was no reliable or
8 relevant evidence to support the reasons given for denying parole;
9 (2) the Board used an incorrect standard of proof; (3) the Board
10 has a policy of denying parole to life prisoners until they have
11 exceeded the terms set forth in the sentencing guidelines; and
12 (4) the Board's decision violates his rights under the Ex Post
13 Facto Clause.
14

15
16 STANDARD OF REVIEW

17 A federal writ of habeas corpus may not be granted with
18 respect to any claim that was adjudicated on the merits in state
19 court unless the state court's adjudication of the claims:
20 "(1) resulted in a decision that was contrary to, or involved an
21 unreasonable application of, clearly established Federal law, as
22 determined by the Supreme Court of the United States; or
23 (2) resulted in a decision that was based on an unreasonable
24 determination of the facts in light of the evidence presented in
25 the State court proceeding." 28 U.S.C. § 2254(d).
26

27 "Under the 'contrary to' clause, a federal habeas court may
28 grant the writ if the state court arrives at a conclusion

1 opposite to that reached by [the Supreme] Court on a question of
2 law or if the state court decides a case differently than [the
3 Supreme] Court has on a set of materially indistinguishable
4 facts." Williams v. Taylor, 529 U.S. 362, 412-13 (2000). "Under
5 the 'unreasonable application' clause, a federal habeas court may
6 grant the writ if the state court identifies the correct
7 governing legal principle from [the Supreme] Court's decisions
8 but unreasonably applies that principle to the facts of the
9 prisoner's case." Id. at 413. The only definitive source of
10 clearly established federal law under 28 U.S.C. § 2254(d) is in
11 the holdings of the Supreme Court as of the time of the relevant
12 state court decision. Id. at 412.

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15 DISCUSSION

16 Petitioner claims that the Board's decision violated his
17 right to due process because it was not based on some reliable
18 and relevant evidence that he currently poses an unreasonable
19 risk to public safety, a requirement under California law.
20 "There is no right under the Federal Constitution to be
21 conditionally released before the expiration of a valid sentence,
22 and the States are under no duty to offer parole to their
23 prisoners." Greenholtz v. Inmates of Neb. Penal and Correctional
24 Complex, 442 U. S. 1, 7 (1979). "When, however, a State creates
25 a liberty interest, the Due Process Clause requires fair
26 procedures for its vindication -- and federal courts will review
27 the application of those constitutionally required procedures."
28

1 Swarthout v. Cooke, No. 10-333, slip op. 1 at 4 (U.S. January 24,
2 2011). The procedures required are "minimal." Id. A prisoner
3 receives adequate process when "he was allowed an opportunity to
4 be heard and was provided a statement of the reasons why." Id.
5 at 4-5. "The Constitution does not require more." Greenholtz,
6 442 U.S. at 16.

7
8 In the instant matter, Petitioner received at least the
9 required amount of process. The record shows that he was allowed
10 to speak at his parole hearing and to contest the evidence
11 against him, that he had received his records in advance, and
12 that he was notified of the reasons parole was denied. Having
13 found that Petitioner received these procedural requirements,
14 this federal habeas court's inquiry is at an end. Cooke, No.
15 10-333, slip op. at 5. Petitioner's claim that the Board's
16 decision did not comply with California's "some evidence" rule of
17 judicial review is of "no federal concern." Id. at 6.

18
19 Petitioner's remaining two claims are without merit. As to
20 the first of these remaining claims, even if the Board used the
21 incorrect standard of proof, this federal habeas court cannot
22 address such an error. This Court is concerned whether
23 Petitioner was afforded the minimal requirements of due process,
24 requirements which the record indicates he was given.

25
26 As to the second remaining claim, Petitioner has provided no
27 evidence that, if there was such a policy, the Board was
28 operating under that policy in his case. Even statistical data

1 as to the rate of denial in other prisoners' cases, which
2 Petitioner cites, will not suffice to establish that the Board
3 always denies parole, or that the Board otherwise improperly made
4 its determination in Petitioner's case. See Mosby v. Solis, 243
5 Fed. Appx. 246, 248 (9th Cir. 2007) (holding statistical denial
6 rate insufficient to establish blanket policy to deny parole);
7 see also Cosio v. Kane, No. C 05-1966 CRB (PR), 2007 WL 518599,
8 at *6 (N.D. Cal.) (holding reliance on statistical data of high
9 percentage of parole denials is not a basis for relief where
10 prisoner received individualized assessment of parole
11 suitability).

12
13 Here, there is nothing to suggest, let alone support a
14 finding, that the Board operated under an anti-parole policy in
15 assessing Petitioner's suitability for parole. Rather, after a
16 full hearing, the Board gave a detailed explanation, based on the
17 specific circumstances of Petitioner's case, for its finding that
18 Petitioner was unsuitable for parole. Also, Petitioner's
19 assertion that the Board has a policy to keep persons with
20 indeterminate sentences incarcerated for excessively long periods
21 is not evidenced in the circumstances of his case. By the time
22 of the 2005 hearing, Petitioner had served only twelve years,
23 three years short of his minimum of fifteen years. Furthermore,
24 under Cooke, this federal habeas court may consider only that he
25 received the protections of a hearing and a reasoned decision,
26 protections he undoubtedly received.
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1 Petitioner's contention that alleged changes in parole laws
2 violated his rights under the Ex Post Facto Clause is without
3 merit. Simply put, as of 2005, the year of the parole
4 determination at issue here, Petitioner had not even served his
5 minimum term of fifteen years, and therefore cannot plausibly be
6 said to have suffered an increase in punishment, the aspect of Ex
7 Post Facto law applicable here. See Collins v. Youngblood, 497
8 U.S. 37, 42 (1990) (citing Calder v. Bull, 3 Dall. 386, 390
9 (1798) (the Ex Post Facto Clause protects a criminal defendant
10 from criminal legislation that effects an increase in punishment,
11 criminalizes conduct that was not previously criminal, requires
12 less or different proof for conviction of an offense than was
13 previously required, or deprives a criminal defendant of any
14 defense available at the time the crime was committed).

15
16
17 Based on the foregoing, the petition is DENIED.

18 CONCLUSION

19 The state court's denial of Petitioner's claims did not
20 result in a decision that was contrary to, or involved an
21 unreasonable application of, clearly established federal law, nor
22 did it result in a decision that was based on an unreasonable
23 determination of the facts in light of the evidence presented in
24 the state court proceeding. Accordingly, the petition is DENIED.

25
26 A certificate of appealability will not issue. Reasonable
27 jurists would not "find the district court's assessment of the
28 constitutional claims debatable or wrong." Slack v. McDaniel,


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529 U.S. 473, 484 (2000). Petitioner may seek a certificate of appealability from the Court of Appeals.

The Clerk shall enter judgment in favor of Respondent, and close the file.

IT IS SO ORDERED.

DATED: 2/14/2011



CLAUDIA WILKEN
United States District Judge

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA
4

5 DANIEL PARTIDA,

Case Number: CV08-03751 CW

6 Plaintiff,

CERTIFICATE OF SERVICE

7 v.

8 BEN CURRY et al,

9 Defendant.
10
11 _____/

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

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

18
19 Daniel Partida H-48181
20 CTF-North
21 P.O. Box 705
22 Soledad, CA 93960-0705

23 Dated: February 14, 2011

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