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4 IN THE UNITED STATES DISTRICT COURT  
5 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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7 JOSE D. CARBAJAL,

No. C 08-4501 CW (PR)

8 Petitioner,

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

9 v.

10 B. CURRY, Warden,

11 Respondent.  
12 \_\_\_\_\_/

13  
14 On September 25, 2008, Petitioner Jose D. Carbajal filed a  
15 petition for a writ of habeas corpus pursuant to title 28 U.S.C.  
16 § 2254, challenging as a violation of his constitutional rights the  
17 second denial of parole by the California Board of Parole Hearings  
18 (Board) on August 1, 2006. On June 16, 2009, the Court issued an  
19 order to show cause why the writ should not be granted. Respondent  
20 filed an answer on October 14, 2009. Petitioner filed a traverse  
21 on November 19, 2009.

22 Having considered all of the papers filed by the parties, the  
23 Court DENIES the petition.

24 BACKGROUND

25 On November 10, 1987, Petitioner plead guilty to second degree  
26 murder and personal use of a firearm, two counts of assault with a  
27 deadly weapon and personal use of a firearm, and robbery and  
28

1 personal use of a firearm. (Petition, Ex. B at 12-15.) On December  
2 18, 1987, the court sentenced Petitioner to a total of twenty-five  
3 years to life plus four months. (Petition, Ex. C.) On August 1,  
4 2006, the Board denied parole. On October 29, 2007, the superior  
5 court denied Petitioner's petition. (Petition, Ex. L, Superior  
6 Court denial.) On January 17, 2008, the California Court of Appeal  
7 summarily denied Petitioner's state habeas petition. (Petition,  
8 Ex. L.) On July 23, 2008, the California Supreme Court denied  
9 Petitioner's state habeas petition. (Id.) Petitioner filed the  
10 instant petition on February 25, 2008.

11 DISCUSSION

12 I. Standard of Review

13 A district court may not grant a petition challenging a state  
14 conviction or sentence on the basis of a claim that was reviewed on  
15 the merits in state court unless the state court's adjudication of  
16 the claim: "(1) resulted in a decision that was contrary to, or  
17 involved an unreasonable application of, clearly established  
18 Federal law, as determined by the Supreme Court of the United  
19 States; or (2) resulted in a decision that was based on an  
20 unreasonable determination of the facts in light of the evidence  
21 presented in the State court proceeding." 28 U.S.C. 2254(d). The  
22 first prong applies both to questions of law and to mixed questions  
23 of law and fact, Williams (Terry) v. Taylor, 529 U.S. 362, 407-09  
24 (2000), while the second prong applies to decisions based on  
25 factual determinations, Miller-El v. Cockrell, 537 U.S. 322, 340  
26 (2003).

27 A state court decision is "contrary to" Supreme Court  
28 authority, that is, falls under the first clause of § 2254(d)(1),

1 only if "the state court arrives at a conclusion opposite to that  
2 reached by [the Supreme] Court on a question of law or if the state  
3 court decides a case differently than [the Supreme] Court has on a  
4 set of materially indistinguishable facts." Williams (Terry), 529  
5 U.S. at 412-13. A state court decision is an "unreasonable  
6 application of" Supreme Court authority, falling under the second  
7 clause of § 2254(d)(1), if it correctly identifies the governing  
8 legal principle from the Supreme Court's decisions but  
9 "unreasonably applies that principle to the facts of the prisoner's  
10 case." Id. at 413. The federal court on habeas review may not  
11 issue the writ "simply because that court concludes in its  
12 independent judgment that the relevant state-court decision applied  
13 clearly established federal law erroneously or incorrectly." Id.  
14 at 411. Rather, the application must be "objectively unreasonable"  
15 to support granting the writ. See id. at 409.

16 II. Analysis

17 Petitioner argues that: (1) he was denied due process because  
18 the Board's decision was not supported by some evidence that he is  
19 currently dangerous, and (2) the Deputy District Attorney violated  
20 the plea agreement by arguing that the commitment offense was  
21 premeditated.

22 A. Due Process Claim

23 "There is no right under the Federal Constitution to be  
24 conditionally released before the expiration of a valid sentence,  
25 and the States are under no duty to offer parole to their  
26 prisoners." Greenholtz v. Inmates of Neb. Penal and Correctional  
27 Complex, 442 U. S. 1, 7 (1979). "When, however, a State creates a  
28 liberty interest, the Due Process Clause requires fair procedures

1 for its vindication -- and federal courts will review the  
2 application of those constitutionally required procedures."  
3 Swarthout v. Cooke, No. 10-333, 2011 WL 197627, \*2 (U.S. January  
4 24, 2011) (per curiam). The procedures required are "minimal."  
5 Id. A prisoner receives adequate process when "he [is] allowed an  
6 opportunity to be heard and [is] provided a statement of the  
7 reasons why." Id. "The Constitution does not require more."  
8 Greenholtz, 442 U.S. at 16.

9 In the instant matter, Petitioner received at least the  
10 required amount of process. The record shows that he was allowed  
11 to speak at his parole hearing and to contest the evidence against  
12 him, that he received access to his records in advance, and that he  
13 was notified as to the reasons parole was denied. Having found  
14 that Petitioner received these procedural requirements, this  
15 federal habeas court's inquiry is at an end. Cooke, 2011 WL  
16 197627, at \*3. Petitioner's claim that the Board's decision did  
17 not comply with California's "some evidence" rule fails to state a  
18 cognizable claim for federal habeas relief. See id.

19 B. Breach of Plea Agreement claim

20 The fundamental fairness protected by the Due Process Clause  
21 requires that promises made during plea bargaining and in analogous  
22 contexts be respected; however, this rule is subject to two  
23 conditions: the promisor must be authorized to make the promise and  
24 the defendant must rely to his detriment on the promise. See  
25 Johnson v. Lumpkin, 769 F.2d 630, 633 (9th Cir. 1985). "[W]hen a  
26 plea rests in any significant degree on a promise or agreement of  
27 the prosecutor, so that it can be said to be a part of the  
28 inducement or consideration, such promise must be fulfilled."

1 Santobello v. New York, 404 U.S. 257, 262 (1971).

2       Petitioner argues that the Deputy District Attorney breached  
3 his plea agreement by opining at the parole suitability hearing  
4 that his crime was premeditated. (Petition at 22.) As a result,  
5 continues Petitioner, the Board lengthened Petitioner's sentence.  
6 (Id.) Respondent does not address this claim.

7       At the plea colloquy, it was apparent that the terms of the  
8 plea agreement were that, in exchange for Petitioner's plea of  
9 guilty, the State would reduce the first degree murder charge to  
10 second degree murder. (Petition, Ex. B at 4.) Specifically,  
11 Petitioner agreed to plead guilty to second degree murder with the  
12 personal use of a firearm, two counts of assault with a deadly  
13 weapon with the personal use of a firearm, and robbery with the  
14 personal use of a firearm. (Id. at 4-5.) Petitioner understood  
15 that by pleading guilty to the stated charges, he could conceivably  
16 be incarcerated in prison for life. (Id. at 10.)

17       While it is true that the Deputy District Attorney described  
18 Petitioner's commitment offense as a "premeditated murder" (Tr. at  
19 76-77), there is no evidence that the description of Petitioner's  
20 crime violated any promise within the plea agreement. Cf. United  
21 States v. Striech, 560 F.3d 926, 929-30 (9th Cir. 2009)  
22 (recognizing that if the terms of a plea agreement have a clear and  
23 unambiguous meaning, the court does not look to extrinsic  
24 evidence). Further, in denying Petitioner parole, none of the  
25 Board members appeared to rely on the Deputy District Attorney's  
26 statements. Petitioner points to no persuasive evidence that the  
27 prosecutor breached the plea agreement. Accordingly, he is not  
28 entitled to habeas relief on this claim.

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CONCLUSION

For the foregoing reasons, the Petition for a Writ of Habeas Corpus is DENIED.

A certificate of appealability will not issue. Reasonable jurists would not "find the district court's assessment of the constitutional claims debatable or wrong." Slack v. McDaniel, 529 U.S. 473, 484 (2000). Petitioner may seek a certificate of appealability from the Court of Appeals.

The Clerk of Court shall terminate all pending motions as moot, enter judgment in accordance with this order and close the file.

IT IS SO ORDERED.

Dated: 2/4/2011

  
\_\_\_\_\_  
CLAUDIA WILKEN  
United States District Judge

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

4 JOSE D. CARBAJAL,

5 Plaintiff,

6 v.

7 B. CURRY et al,

8 Defendant.

Case Number: CV08-04501 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 4, 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 Jose D. Carbajal D74035  
16 P.O. Box 689 - YW315L  
Soledad, CA 93960-0684

17 Dated: February 4, 2011

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