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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

KEITH AUGUSTINE,	)	No. C 08-5676 CW (PR)
	)	
Petitioner,	)	ORDER DENYING PETITION FOR A
	)	WRIT OF HABEAS CORPUS
v.	)	
	)	
ROBERT L. AYERS, Warden,	)	
	)	
Respondent.	)	
_____	)	

INTRODUCTION

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

BACKGROUND

In 1992, a Riverside County Superior Court jury convicted Petitioner of second degree murder, and Petitioner was sentenced to fifteen years to life in state prison. In 2007, the Board of Parole Hearings (Board) found Petitioner unsuitable for parole on grounds that he "would pose an unreasonable risk of danger to society and or a threat to public safety if released from prison." (Ans., Ex. 2 at 122.) In response to the Board's decision,

1 Petitioner sought, but was denied, relief on state collateral  
2 review. This federal habeas petition followed. As grounds for  
3 federal habeas relief, Petitioner alleges that the Board's  
4 decision denying parole violated his right to due process because  
5 the decision was not supported by some evidence.

6  
7 STANDARD OF REVIEW

8 A federal writ of habeas corpus may not be granted with  
9 respect to any claim that was adjudicated on the merits in state  
10 court unless the state court's adjudication of the claims:

11 "(1) resulted in a decision that was contrary to, or involved an  
12 unreasonable application of, clearly established Federal law, as  
13 determined by the Supreme Court of the United States; or

14 (2) resulted in a decision that was based on an unreasonable  
15 determination of the facts in light of the evidence presented in  
16 the State court proceeding." 28 U.S.C. § 2254(d).

17  
18 "Under the 'contrary to' clause, a federal habeas court may  
19 grant the writ if the state court arrives at a conclusion  
20 opposite to that reached by [the Supreme] Court on a question of  
21 law or if the state court decides a case differently than [the  
22 Supreme] Court has on a set of materially indistinguishable  
23 facts." Williams v. Taylor, 529 U.S. 362, 412-13 (2000). "Under  
24 the 'unreasonable application' clause, a federal habeas court may  
25 grant the writ if the state court identifies the correct  
26 governing legal principle from [the Supreme] Court's decisions  
27 but unreasonably applies that principle to the facts of the  
28

1 prisoner's case." Id. at 413. The only definitive source of  
2 clearly established federal law under 28 U.S.C. § 2254(d) is in  
3 the holdings of the Supreme Court as of the time of the relevant  
4 state court decision. Id. at 412.

5  
6 DISCUSSION

7 Petitioner claims that the Board's decision denying parole  
8 violated his right to due process because the decision was not  
9 supported by some evidence, a requirement under California law.  
10 "There is no right under the Federal Constitution to be  
11 conditionally released before the expiration of a valid sentence,  
12 and the States are under no duty to offer parole to their  
13 prisoners." Greenholtz v. Inmates of Neb. Penal and Correctional  
14 Complex, 442 U. S. 1, 7 (1979). "When, however, a State creates  
15 a liberty interest, the Due Process Clause requires fair  
16 procedures for its vindication -- and federal courts will review  
17 the application of those constitutionally required procedures."  
18 Swarthout v. Cooke, No. 10-333, slip op. 1 at 4 (U.S. January 24,  
19 2011). The procedures required are "minimal." Id. A prisoner  
20 receives adequate process when "he was allowed an opportunity to  
21 be heard and was provided a statement of the reasons why." Id.  
22 at 4-5. "The Constitution does not require more." Greenholtz,  
23 442 U.S. at 16.

24  
25  
26 In the instant matter, Petitioner received at least the  
27 required amount of process. The record shows that he was allowed  
28 to speak at his parole hearing and to contest the evidence

1 against him, that he had received his records in advance, and  
2 that he was notified of the reasons parole was denied. Having  
3 found that Petitioner received these procedural requirements,  
4 this federal habeas court's inquiry is at an end. Cooke, No.  
5 10-333, slip op. at 5. Petitioner's claim that the Board's  
6 decision was not supported by California's "some evidence" rule  
7 of judicial review is of "no federal concern." Id. at 6.

8  
9 Based on the foregoing, the petition is DENIED.

10 CONCLUSION

11 The state court's denial of Petitioner's claims did not  
12 result in a decision that was contrary to, or involved an  
13 unreasonable application of, clearly established federal law, nor  
14 did it result in a decision that was based on an unreasonable  
15 determination of the facts in light of the evidence presented in  
16 the state court proceeding. Accordingly, the petition is DENIED.

17  
18 A certificate of appealability will not issue. Reasonable  
19 jurists would not "find the district court's assessment of the  
20 constitutional claims debatable or wrong." Slack v. McDaniel,  
21 529 U.S. 473, 484 (2000). Petitioner may seek a certificate of  
22 appealability from the Court of Appeals.

23  
24 The Clerk shall enter judgment in favor of Respondent, and  
25 close the file.

26 IT IS SO ORDERED.

27 DATED: 2/14/2011

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\_\_\_\_\_  
CLAUDIA WILKEN

**United States District Court**  
For the Northern District of California

United States District Judge

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

5 KEITH AUGUSTINE,

Case Number: CV08-05676 CW

6 Plaintiff,

**CERTIFICATE OF SERVICE**

7 v.

8 ROBERT L. AYERS 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 Keith Augustine H-52270  
20 4N65 u  
21 San Quentin State Prison  
22 San Quentin, CA 94974

23 Dated: February 14, 2011

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