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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

GARY SMITH,)	No. C 09-00097 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 1986, a Los Angeles County Superior Court jury convicted Petitioner of first degree murder, and he was sentenced to twenty-five years to life, plus a two-year enhancement, in state prison. In 2007, the Board of Parole Hearings (Board) found Petitioner unsuitable for parole on grounds that the circumstances of his commitment offense and his continuing need for self-help indicate that he "would pose an unreasonable risk of danger to society and or a threat to public safety if released from prison." (Ans., Ex.

1 2 at 98.)¹ In response to the Board's decision, Petitioner
2 sought, but was denied, relief on state collateral review. This
3 federal habeas petition followed.

4 STANDARD OF REVIEW

5 A federal writ of habeas corpus may not be granted with
6 respect to any claim that was adjudicated on the merits in state
7 court unless the state court's adjudication of the claims:
8 "(1) resulted in a decision that was contrary to, or involved an
9 unreasonable application of, clearly established Federal law, as
10 determined by the Supreme Court of the United States; or
11 (2) resulted in a decision that was based on an unreasonable
12 determination of the facts in light of the evidence presented in
13 the State court proceeding." 28 U.S.C. § 2254(d).
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16 "Under the 'contrary to' clause, a federal habeas court may
17 grant the writ if the state court arrives at a conclusion
18 opposite to that reached by [the Supreme] Court on a question of
19 law or if the state court decides a case differently than [the
20 Supreme] Court has on a set of materially indistinguishable
21 facts." Williams v. Taylor, 529 U.S. 362, 412-13 (2000). "Under
22 the 'unreasonable application' clause, a federal habeas court may
23 grant the writ if the state court identifies the correct
24 governing legal principle from [the Supreme] Court's decisions
25 but unreasonably applies that principle to the facts of the
26 prisoner's case." Id. at 413. The only definitive source of
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¹ Citations are to the pages of the parole hearing transcript.

1 clearly established federal law under 28 U.S.C. § 2254(d) is in
2 the holdings of the Supreme Court as of the time of the relevant
3 state court decision. Id. at 412.

4 DISCUSSION

5 Petitioner claims that the Board's decision violated his
6 right to due process because it was not based on "some evidence"
7 that he currently poses an unreasonable risk to public safety, a
8 requirement under California law. "There is no right under the
9 Federal Constitution to be conditionally released before the
10 expiration of a valid sentence, and the States are under no duty
11 to offer parole to their prisoners." Greenholtz v. Inmates of
12 Neb. Penal and Correctional Complex, 442 U. S. 1, 7 (1979).

13 "When, however, a State creates a liberty interest, the Due
14 Process Clause requires fair procedures for its vindication --
15 and federal courts will review the application of those
16 constitutionally required procedures." Swarthout v. Cooke, No.
17 10-333, slip op. 1 at 2 (U.S. January 24, 2011). The procedures
18 required are "minimal." Id. A prisoner receives adequate
19 process when "he was allowed an opportunity to be heard and was
20 provided a statement of the reasons why." Id. "The Constitution
21 does not require more." Greenholtz, 442 U.S. at 16.

22 In the instant matter, Petitioner received at least the
23 required amount of process. The record shows that he was allowed
24 to speak at his parole hearing and to contest the evidence
25 against him, that he had received his records in advance, and
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1 that he was notified as to the reasons parole was denied. Having
2 found that Petitioner received these procedural requirements,
3 this federal habeas court's inquiry is at an end. Cooke, No.
4 10-333, slip op. at 5. Petitioner's claim that the Board's
5 decision did not comply with California's "some evidence" rule of
6 judicial review is of "no federal concern." Id. at 6.
7 Accordingly, the petition is DENIED.
8

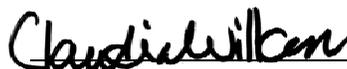
9 CONCLUSION

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

17 A certificate of appealability will not issue. Reasonable
18 jurists would not "find the district court's assessment of the
19 constitutional claims debatable or wrong." Slack v. McDaniel,
20 529 U.S. 473, 484 (2000). Petitioner may seek a certificate of
21 appealability from the Court of Appeals. The Clerk shall enter
22 judgment in favor of Respondent and close the file.
23

24 IT IS SO ORDERED.

25 DATED: 1/24/2011

26 

27 CLAUDIA WILKEN

28 United States District Judge

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

5 GARY SMITH,

Case Number: CV09-00097 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 January 24, 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 Gary Smith D-39109
20 1-246 Up
21 CSP- Solano
22 P.O. Box 4000
23 Vacaville, CA 95696-4000

24 Dated: January 24, 2011

25 Richard W. Wieking, Clerk
26 By: Nikki Riley, Deputy Clerk
27
28