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3 IN THE UNITED STATES DISTRICT COURT  
4 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
5

6 WILLIAM L. EVINS,

No. C 09-1345 CW (PR)

7 Petitioner,

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

8 v.

9 BEN CURRY, Warden,

10 Respondent.  
11 \_\_\_\_\_/

12  
13 Petitioner, a state prisoner, filed this pro se petition for  
14 writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging the  
15 constitutionality of the denial of his parole by the California  
16 Board of Parole Hearings (Board) on October 23, 2007.

17 Specifically, Petitioner claims that: (1) there were no grounds to  
18 support the denial of parole; (2) he was denied due process; and  
19 (3) he is not a current threat to public safety. Doc. No. 1 at 6.  
20 Petitioner also brings a claim for breach of his plea agreement.

21 Id.

22 The United States Supreme Court recently made clear that in  
23 the context of a federal habeas challenge to the denial of parole,  
24 a prisoner subject to a parole statute similar to California's  
25 receives adequate process when the Board allows him an opportunity  
26 to be heard and provides him with a statement of the reasons why  
27 parole was denied. Swarthout v. Cooke, No. 10-333, slip op. at 4-5  
28 (U.S. Jan. 24, 2011). Here, the record shows Petitioner received  
at least this amount of process. The Constitution does not require  
more. Id. at 5.

1           The Court also made clear that whether the Board's decision  
2 was supported by some evidence of current dangerousness is  
3 irrelevant in federal habeas: "it is no federal concern . . .  
4 whether California's 'some evidence' rule of judicial review (a  
5 procedure beyond what the Constitution demands) was correctly  
6 applied." Swarthout v. Cooke, slip op. at 6.

7           Accordingly, Petitioner's challenge to the Board's denial of  
8 parole is DENIED.

9           Petitioner's other claim--that the denial of parole was a  
10 breach of his plea agreement--also will be DENIED. Petitioner has  
11 shown no term that has been breached. Petitioner admits that was  
12 sentenced to fifteen years to life. Doc. No. 1 at 2. Assuming  
13 that Petitioner claims that the denial of parole violates his plea  
14 agreement, Petitioner does not show that his plea agreement was  
15 conditioned in any way on a promise that Petitioner would only have  
16 to serve a particular amount of time in prison. See, e.g., James  
17 v. Borg, 24 F.3d 20, 26 (9th Cir. 1994) ("Conclusory allegations  
18 which are not supported by a statement of specific facts do not  
19 warrant habeas relief."). In any event, although characterized as  
20 a violation of Petitioner's plea agreement, this claim is without  
21 merit as it appears to be encompassed by Petitioner's claim that  
22 the Board's decision violated his due process rights.

23           Accordingly, the instant federal Petition for a Writ of Habeas  
24 corpus is DENIED.

25           Further, a Certificate of Appealability is DENIED. See Rule  
26 11(a) of the Rules Governing Section 2254 Cases. Petitioner has  
27 not made "a substantial showing of the denial of a constitutional  
28 right." 28 U.S.C. § 2253(c)(2). Nor has Petitioner demonstrated

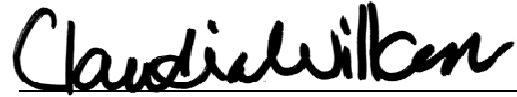
1 that "reasonable jurists would find the district court's assessment  
2 of the constitutional claims debatable or wrong." Slack v.  
3 McDaniel, 529 U.S. 473, 484 (2000). Petitioner may not appeal the  
4 denial of a Certificate of Appealability in this Court but may seek  
5 a certificate from the Court of Appeals under Rule 22 of the  
6 Federal Rules of Appellate Procedure. See Rule 11(a) of the Rules  
7 Governing Section 2254 Cases.

8 The Clerk shall terminate any pending motions as moot, enter  
9 judgment in favor of Respondent and close the file.

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IT IS SO ORDERED.

Dated: 2/15/2011



CLAUDIA WILKEN

UNITED STATES DISTRICT JUDGE

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

4 WILLIAM L. EVINS,

Case Number: CV09-01345 CW

6 Plaintiff,

**CERTIFICATE OF SERVICE**

7 v.

9 BEN CURRY et al,

10 Defendant.  
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 15, 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 William L. Evins  
20 D14797  
21 P.O. Box 689  
22 Z-120-L  
23 Soledad, CA 93960

24 Dated: February 15, 2011

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