

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

3  
4 BUNN ROEUNG VANN,

No. C 09-02383 CW (PR)

5                                    Petitioner,

6                                    v.

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

7 B. CURRY, Warden,

8                                    Respondent.  
9 \_\_\_\_\_/

10                                    INTRODUCTION

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

14                                    BACKGROUND

15                                    In 1991, a Los Angeles County Superior Court jury convicted  
16 Petitioner of first degree murder, and he was sentenced to twenty-  
17 five years to life, plus a one-year enhancement, in state prison.  
18 In 2007, the Board of Parole Hearings (Board) found Petitioner  
19 unsuitable for parole on grounds that the circumstances of his  
20 gang-related commitment offense, his previous record of violence,  
21 his institutional behavior, and his continuing need for self-help  
22 indicate that, if released from prison, he would pose an  
23 unreasonable risk of danger to society, or a threat to public  
24 safety, or both. (Ans., Ex. 1 at 61-64.)<sup>1</sup> The Board also based its  
25 denial on his uncertain parole plans. (Id. at 60-61, 64-65.) In  
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27  
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<sup>1</sup> Citations are to the pages of the parole hearing transcript.

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

9 "(1) resulted in a decision that was contrary to, or involved an  
10 unreasonable application of, clearly established Federal law, as  
11 determined by the Supreme Court of the United States; or  
12 (2) resulted in a decision that was based on an unreasonable  
13 determination of the facts in light of the evidence presented in  
14 the State court proceeding." 28 U.S.C. § 2254(d).

15 "Under the 'contrary to' clause, a federal habeas court may  
16 grant the writ if the state court arrives at a conclusion opposite  
17 to that reached by [the Supreme] Court on a question of law or if  
18 the state court decides a case differently than [the Supreme]  
19 Court has on a set of materially indistinguishable facts."

20 Williams v. Taylor, 529 U.S. 362, 412-13 (2000). "Under the  
21 'unreasonable application' clause, a federal habeas court may  
22 grant the writ if the state court identifies the correct governing  
23 legal principle from [the Supreme] Court's decisions but  
24 unreasonably applies that principle to the facts of the prisoner's  
25 case." Id. at 413. The only definitive source of clearly  
26 established federal law under 28 U.S.C. § 2254(d) is in the  
27  
28

1 holdings of the Supreme Court as of the time of the relevant state  
2 court decision. Id. at 412.

3 DISCUSSION

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

23 In the instant matter, Petitioner received at least the  
24 required amount of process. The record shows that he was allowed  
25 to speak at his parole hearing and to contest the evidence against  
26 him, that he had received his records in advance, and that he was  
27 notified as to the reasons parole was denied. Having found that  
28

1 Petitioner received these procedural requirements, this federal  
2 habeas court's inquiry is at an end. Cooke, slip op. at 5.  
3 Petitioner's claim that the Board's decision did not comply with  
4 California's "some evidence" rule of judicial review is of "no  
5 federal concern." Id. at 6. Accordingly, the petition is DENIED.  
6

7 CONCLUSION

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

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

22 IT IS SO ORDERED.

23 Dated: 2/4/2011

24   
25 CLAUDIA WILKEN  
26 UNITED STATES DISTRICT JUDGE  
27  
28

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

4 BUNN ROEUNG VANN,

Case Number: CV09-02383 CW

5 Plaintiff,

6 **CERTIFICATE OF SERVICE**

7 v.

8 B. CURRY et al,

9 Defendant.  
10 \_\_\_\_\_/

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

13 That on February 4, 2011, I SERVED a true and correct copy(ies) of the attached, by placing  
14 said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by  
15 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office  
16 delivery receptacle located in the Clerk's office.

17  
18 Bunn Roeung Vann E-90627  
19 CTF-Central  
20 P.O. Box 689  
21 Soledad, CA 93960

Dated: February 4, 2011

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