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

JERRY G. WILLS, No. C 09-04137 CW (PR)
Petitioner,
v. ORDER DENYING PETITION FOR A
BOARD OF PAROLE HEARINGS, et al., WRIT OF HABEAS CORPUS; AND
DENYING CERTIFICATE OF
Respondents. APPEALABILITY

_____ /

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 1980, a Orange County Superior Court jury convicted Petitioner of first degree murder and assault with intent to commit 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, his unstable social history, his past involvement with drugs and alcohol, his continuing need for self-help and substance abuse programming, his psychological evaluation that was "not totally supportive of release," and his inadequate parole plans indicate that, if released from prison, he would pose an unreasonable risk of danger to society, or a threat to public safety, or both.

United States District Court
For the Northern District of California

1 (Ans., Ex. 1 at 77-83.)¹ In response to the Board's decision,
2 Petitioner sought, but was denied, relief on state collateral
3 review. This 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).

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

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

27 _____
28 ¹ Citations are to the pages of the parole hearing transcript.

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.

21 In the instant matter, Petitioner received at least the
22 required amount of process. The record shows that he was allowed
23 to speak at his parole hearing and to contest the evidence against
24 him, that he had received his records in advance, and that he was
25 notified as to the reasons parole was denied. Having found that
26 Petitioner received these procedural requirements, this federal
27 habeas court's inquiry is at an end. Cooke, slip op. at 5.

1 Petitioner's claim that the Board's decision did not comply with
2 California's "some evidence" rule of judicial review is of "no
3 federal concern." Id. at 6. Accordingly, the petition is DENIED.

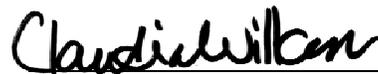
4 CONCLUSION

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

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

18 IT IS SO ORDERED.

19 Dated: 2/14/2011



CLAUDIA WILKEN

UNITED STATES DISTRICT JUDGE

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

4 JERRY G WILLS,

5 Plaintiff,

6 v.

7 BOARD OF PAROLE HEARINGS et al,

8 Defendant.
9 _____/

Case Number: CV09-04137 CW

CERTIFICATE OF SERVICE

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 14, 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 Jerry G. Wills
19 C-20852
20 Correctional Training Facility
21 P.O. Box 689
22 Soledad, CA 93960-0689

23 Dated: February 14, 2011

24
25 Richard W. Wieking, Clerk
26 By: Nikki Riley, Deputy Clerk
27
28