

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

NEVILLE PORRAS,

No. C 09-04936 CW (PR)

Petitioner,

v.

RANDY GROUNDS, Warden,

Respondent.

ORDER DENYING MOTION FOR
RECONSIDERATION OR,
ALTERNATIVELY, REQUEST FOR
CERTIFICATE OF APPEALABILITY;
DENYING LEAVE TO PROCEED IN
FORMA PAUPERIS ON APPEAL;
DENYING MOTION FOR
CLARIFICATION

Petitioner filed the instant pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 based upon Governor Arnold Schwarzenegger's reversal of the decision by the Board of Parole Hearings (Board) finding Petitioner suitable for parole. On February 15, 2011, the Court denied the petition, finding as follows:

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

1 In the instant matter, Petitioner received at least the
2 required amount of process. The record shows that he was
3 allowed an opportunity to be heard at his parole hearing
4 and that he was notified of the reasons the Governor
5 denied him parole. Having found that Petitioner received
6 these procedural requirements, this federal habeas
7 court's inquiry is at an end. Cooke, slip op. at 5.
8 Petitioner's claim that the Governor's decision did not
9 comply with California's "some evidence" rule of judicial
10 review is of "no federal concern." Id. at 6.
11 Accordingly, the petition is DENIED.

12 Order Denying Petition at 3:6-4:6.

13 By that same order, the Court denied a certificate of
14 appealability. Thereafter, Petitioner filed a notice of appeal and
15 a motion for reconsideration or, alternatively, request for a
16 certificate of appealability. On July 11, 2011, the Ninth Circuit
17 dismissed the appeal for lack of jurisdiction because the notice of
18 appeal was untimely. In so doing, the Ninth Circuit stated: "This
19 dismissal is without prejudice to the filing of a timely notice of
20 appeal from the district court's decision on appellant's pending
21 motion for reconsideration." Porras v. Grounds, No. 11-15827 (9th
22 Cir. July 11, 2011.)

23 Petitioner moves for reconsideration of the Court's decision
24 denying the instant petition by arguing that the Supreme Court
25 wrongly decided Cooke. Petitioner's disagreement with the Supreme
26 Court's decision does not provide a basis for the Court to set
27 aside the Order denying his habeas petition or the judgment
28 thereon.

29 Petitioner's renewed request for a certificate of
30 appealability also is without merit. As the Ninth Circuit recently
31 clarified: "Cooke was unequivocal in holding that if an inmate

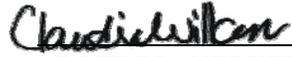
1 seeking parole receives an opportunity to be heard, a notification
2 of the reasons as to denial of parole, and access to their records
3 in advance, '[t]hat should . . . be [] the beginning and the end of
4 [the] inquiry into whether [the inmate] received due process.'" Pearson v. Muntz, 639 F.3d 1185, 1191 (9th Cir. 2011) (quoting
5 Cooke, 131 S. Ct. at 862). Such rationale applies whether the
6 prisoner is challenging the decision of the Governor or of the
7 Board. Styre v. Adams, ___ F.3d. ___, 2011 WL 2176465, at *1 (9th
8 Cir. June 6, 2011) (finding due process satisfied where prisoner
9 did not dispute he received procedural safeguards at Board hearing
10 and Governor reversed Board's grant of parole without conducting
11 separate hearing). Because Petitioner herein has not disputed that
12 he was provided with the above procedural safeguards at his
13 hearing, and the record shows that he was, the Court finds that
14 reasonable jurists would not "find the district court's assessment
15 of the constitutional claims debatable or wrong." Slack v.
16 McDaniel, 529 U.S. 473, 484 (2000).

17
18 Accordingly, Petitioner's motion for reconsideration or,
19 alternatively, request for a certificate of appealability is
20 DENIED. Additionally, Petitioner's motion to proceed in forma
21 pauperis on appeal is DENIED. Petitioner has since filed a Motion
22 for Clarification, requesting the status of his Motion for
23 Reconsideration. The Motion for Clarification is now DENIED as
24 moot. This Order terminates Docket nos. 8, 12 and 18.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS SO ORDERED.

Dated: 9/8/2011



CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE

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

4 NEVILLE PORRAS,

Case Number: CV09-04936 CW

5 Plaintiff,

6 **CERTIFICATE OF SERVICE**

7 v.

8 C. NOLL 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 September 8, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said
14 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
15 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located
16 in the Clerk's office.

17
18 Neville Porras E-37606
19 Correctional Training Facility
20 Z-118-U
21 P.O. Box 689
22 Soledad, CA 93960-0689

23 Dated: September 8, 2011

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