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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

WILLIE CARPENTER,
Petitioner,

No. C 10-1557 PJH (PR)

vs.

RANDY GROUNDS, Warden,
Respondent.

**ORDER DENYING
HABEAS PETITION AND
DENYING CERTIFICATE
OF APPEALABILITY**

This is a habeas corpus case filed by a state prisoner pursuant to 28 U.S.C. 2254.

BACKGROUND

In 1982 a Los Angeles County jury convicted petitioner of first degree murder. He was sentenced to twenty-five years to life in prison. This petition is directed to a denial of parole on October 29, 2007.

DISCUSSION

Petitioner raised only one issue in his petition, a contention that the parole denial was not supported by “some evidence.” The court issued an order to show cause, in response to which respondent has filed a motion to dismiss the petition as barred by the statute of limitations. Because a recent Supreme Court case makes clear that the claim has no merit, the petition will be denied and the motion to dismiss will be denied as moot.

I. Merits

Petitioner contends that there was not some evidence to support the parole denial, which he claims was a violation of due process. The United States Supreme Court has recently held that “[i]n the context of parole . . . the procedures required [by the due process clause] are minimal . . . an opportunity to be heard and . . . a statement of the reasons why

1 parole was denied . . . “[t]he Constitution . . . does not require more.” *Swarthout v. Cooke*,
2 No. 10-333, slip op. at 4-5 (January 24, 2011). That is, there is no due process
3 requirement that a parole denial be supported by “some evidence.” Petitioner’s sole claim
4 therefore is without merit.

5 **II. Certificate of Appealability**

6 The federal rules governing habeas cases brought by state prisoners require a
7 district court that denies a habeas petition to grant or deny a certificate of appealability in
8 the ruling. See Rule 11(a), Rules Governing § 2254 Cases, 28 U.S.C. foll. § 2254.

9 A petitioner may not appeal a final order in a federal habeas corpus proceeding
10 without first obtaining a certificate of appealability. See 28 U.S.C. § 2253(c); Fed. R. App.
11 P. 22(b). A judge shall grant a certificate of appealability “only if the applicant has made a
12 substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). “Where
13 a district court has rejected the constitutional claims on the merits, the showing required to
14 satisfy § 2253(c) is straightforward: the petitioner must demonstrate that reasonable jurists
15 would find the district court’s assessment of the constitutional claims debatable or wrong.”
16 *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

17 For the reasons set out above, jurists of reason would not find the result debatable
18 or wrong. A certificate of appealability will be denied. Petitioner is advised that he may not
19 appeal the denial of a COA, but he may ask the court of appeals to issue a COA under
20 Rule 22 of the Federal Rules of Appellate Procedure. See Rule 11(a), Rules Governing §
21 2254 Cases.

22 **CONCLUSION**

23 The petition for a writ of habeas corpus is **DENIED**. The motion to dismiss
24 (document number 5 on the docket) is **DENIED** as moot. A certificate of appealability is
25 **DENIED**. The clerk shall close the file.

26 **IT IS SO ORDERED.**

27 Dated: January 31, 2011.



28 _____
PHYLLIS J. HAMILTON
United States District Judge