

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

3
4 NICHOLAS P. ZAMBRANO,

No. C 11-00229 CW (PR)

5 Petitioner,

6 v.

ORDER DENYING MOTION FOR
RECONSIDERATION OR,
ALTERNATIVELY, REQUEST FOR
CERTIFICATE OF APPEALABILITY

7 RANDY GROUNDS, Warden,

8 Respondent.

(Docket no. 5)

9 _____/

10 Petitioner filed this pro se petition for a writ of
11 habeas corpus pursuant to 28 U.S.C. § 2254, challenging as a
12 violation of his constitutional rights a 2009 decision to deny him
13 parole by the California Board of Parole Hearings (Board).
14 Specifically, Petitioner claims that the Board's decision does not
15 comport with due process because it is not supported by some
16 evidence demonstrating that he poses a current unreasonable threat
17 to the public.

18 On February 15, 2011, the Court denied the petition, finding
19 as follows:

20 In the context of parole, a prisoner subject to a
21 parole statute similar to California's receives adequate
22 process when he is allowed an opportunity to be heard and
23 is provided with a statement of the reasons why parole
24 was denied. Swarthout v. Cooke, No. 10-333, slip op. at
25 4-5 (U.S. Jan. 24, 2011). The attachments to the
26 petition show Petitioner received at least this amount of
27 process. The Constitution does not require more. Id. at
28 5.

29 Whether the Board's decision was supported by some
30 evidence of current dangerousness is irrelevant on a
31 petition for a writ of habeas corpus in federal court.
32 The Supreme Court has made clear that "it is no federal
33 concern . . . whether California's 'some evidence' rule
34 of judicial review (a procedure beyond what the
35 Constitution demands) was correctly applied." Id. at 6.

1 For the foregoing reasons, the petition for a writ
2 of habeas corpus is DENIED. And pursuant to Rule 11 of
3 the Rules Governing Section 2254 Cases, a certificate of
4 appealability under 28 U.S.C. § 2253(c) is DENIED because
5 it cannot be said that "reasonable jurists would find the
6 district court's assessment of the constitutional claims
7 debatable or wrong." Slack v. McDaniel, 529 U.S. 473,
8 484 (2000). Petitioner may seek a certificate of
9 appealability from the Ninth Circuit Court of Appeals.

10 Feb. 15, 2011 Order at 1:17-2:10.

11 Petitioner now moves for reconsideration of the Court's
12 decision denying the instant petition by arguing that the Supreme
13 Court wrongly decided Cooke. Petitioner's disagreement with the
14 Supreme Court's decision does not provide a basis for the Court to
15 set aside the Order denying his habeas petition or the judgment
16 thereon.

17 Further, Petitioner's renewed request for a certificate of
18 appealability also is without merit. As the Ninth Circuit recently
19 clarified: "Cooke was unequivocal in holding that if an inmate
20 seeking parole receives an opportunity to be heard, a notification
21 of the reasons as to denial of parole, and access to their records
22 in advance, '[t]hat should . . . be [] the beginning and the end of
23 [the] inquiry into whether [the inmate] received due process.'" Pearson v. Muntz, 639 F.3d 1185, 1191 (9th Cir. 2011) (quoting
24 Cooke, 131 S. Ct. at 862). Because Petitioner herein has not
25 disputed that he was provided with the above procedural safeguards
26 at his hearing, and the record shows that he was, the Court
27 continues to find that reasonable jurists would not "find the
28 district court's assessment of the constitutional claims debatable
or wrong." Slack v. McDaniel, 529 U.S. 473, 484 (2000).

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1 Accordingly, for the foregoing reasons, Petitioner's motion
2 for reconsideration or, alternatively, request for a certificate of
3 appealability is DENIED.

4 This Order terminates Docket no. 5.

5 IT IS SO ORDERED.

6 Dated: 2/3/2012



CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE

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