

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

3 MICHAEL VILLANUEVA,

No. C 11-01715 SBA (PR)

4 Petitioner,

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

5 v.

6 VINCENT S. CULLEN, Warden,

7 Respondent.
8 _____/

9 Petitioner has filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254 claiming
10 that his constitutional rights were violated in connection with a decision by the California Board of
11 Parole Hearings (Board) in 2009 denying him parole. Petitioner specifically claims that the decision
12 does not comport with due process because it is not supported by "some evidence" demonstrating
13 that he poses a current unreasonable threat to the public. He also claims that conducting his parole
14 hearing under Proposition 9 (Marsy's Law) was a violation of the ex post facto clause of federal
15 constitution. Proposition 9, the "Victims' Bill of Rights Act of 2008: Marsy's Law," modified the
16 availability and frequency of parole hearings. Specifically, Marsy's Law provides that the Board
17 will hear each case every fifteen years unless it opts to schedule the next hearing in three, five, seven
18 or ten years. Cal. Penal Code § 3041.5(b)(3) (2010).

19 A prisoner subject to California's parole statute receives adequate process when he is allowed
20 an opportunity to be heard and is provided with a statement of the reasons why parole was denied.
21 Swarthout v. Cooke, 131 S. Ct. 859, 862 (2011). The attachments to the petition show Petitioner
22 received at least this amount of process. The Constitution does not require more. Id.

23 Whether the Board's decision was supported by some evidence of current dangerousness is
24 irrelevant in federal habeas. The Supreme Court has made clear that "it is no federal
25 concern . . . whether California's 'some evidence' rule of judicial review (a procedure beyond what
26 the Constitution demands) was correctly applied." Id. at 863.

27 Petitioner's ex post facto claim also fails. The Ninth Circuit has recently held that Marsy's
28 Law does not violate the ex post facto clause. See Gillman v. Schwarzenegger, No. 10-15471, slip

1 op. 1339, 1357 (9th Cir., Jan. 24, 2011). Accordingly, the Court finds that Petitioner's allegations do
2 not state a cognizable claim for an ex post facto violation.

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

8 The Clerk of the Court shall enter judgment in favor of Respondent, terminate all pending
9 motions, and close the file.

10 IT IS SO ORDERED.

11 DATED: 5/10/11


SAUNDRA BROWN ARMSTRONG
United States District Judge

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1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA
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6 MICHAEL VILLANUEVA,
7 Plaintiff,

Case Number: CV11-01715 SBA

CERTIFICATE OF SERVICE

8 v.

9 VINCENT S. CULLEN et al,
10 Defendant.
11 _____/

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

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

18 Michael Villanueva H-49644
19 California State Prison - San Quentin
20 San Quentin, CA 94974

21 Dated: May 13, 2011

Richard W. Wieking, Clerk
By: LISA R CLARK, Deputy Clerk

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