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E-FILED - 4/21/11

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

ROBERT BARKER,)	No. C 11-0609 RMW (PR)
)	
Petitioner,)	ORDER OF DISMISSAL
)	
vs.)	
)	
WARDEN R. GROUNDS,)	
)	
Respondent.)	
_____)	

Petitioner, a state prisoner proceeding pro se, seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2254 challenging a 2008 decision by the California Board of Parole Hearings’ (“Board”) finding him unsuitable for parole. Petitioner has paid the filing fee. For the reasons stated below, the court DISMISSES the petition for failure to state a cognizable claim for relief.

BACKGROUND

According to the petition, in 1986, petitioner was found guilty of first degree murder with the use of a weapon, and was sentenced to a term of 26 years-to-life in state prison. On September 23, 2008, petitioner was denied parole. Petitioner challenged this decision unsuccessfully in all three levels of state court.

DISCUSSION

A. Standard of Review

This court may entertain a petition for writ of habeas corpus “in behalf of a person in

1 custody pursuant to the judgment of a state court only on the ground that he is in custody in
2 violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a); Rose
3 v. Hodges, 423 U.S. 19, 21 (1975).

4 A district court shall “award the writ or issue an order directing the respondent to show
5 cause why the writ should not be granted, unless it appears from the application that the
6 applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243.

7 B. Petitioner’s Claims

8 As grounds for federal habeas relief, petitioner claims only that the Board improperly
9 denied parole based on the unchanging facts of the underlying commitment offense in the face of
10 evidence of significant rehabilitation and without sufficient evidence that Petitioner would
11 currently be a danger to society if released. However, the Supreme Court has recently made
12 clear that a prisoner’s federal due process claim regarding a denial of parole is limited to whether
13 he received the minimum procedures necessary under the federal constitution. Swarthout v.
14 Cooke, 131 S. Ct. 859, 862-63 (U.S. 2011) (per curiam). Specifically, this court’s inquiry is
15 limited to whether petitioner was given an opportunity to be heard, and given a statement of
16 reasons for the denial. Id. at 862, citing Greenholtz v. Inmates of Neb. Penal and Correctional
17 Complex, 442 U.S. 1, 16 (1979). Thus, petitioner’s claim fails to state a cognizable claim for
18 federal habeas relief. See id.

19 Accordingly, this case is DISMISSED for failure to state a claim. The Clerk shall close
20 the file and enter judgment in this matter.

21 **CERTIFICATE OF APPEALABILITY**

22 A certificate of appealability will not issue. Reasonable jurists would not “find the
23 district court’s assessment of the constitutional claims debatable or wrong.” Slack v. McDaniel,
24 529 U.S. 473, 484 (2000). Petitioner may seek a certificate of appealability from the Court of
25 Appeals.

26 IT IS SO ORDERED.

27 DATED: 4/21/11

28 
RONALD M. WHYTE
United States District Judge