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United States District Court
For the Northern District of California

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

JAMES WHEELAND,)	No. C 11-02310 EJD (PR)
)	
Petitioner,)	ORDER OF DISMISSAL; DENYING
)	CERTIFICATE OF APPEALABILITY
vs.)	
)	
RANDY GROUNDS, Warden,)	
)	
Respondent.)	
_____)	

Petitioner, a California prisoner, has filed a pro se petition for a writ of habeas corpus under 28 U.S.C. § 2254, challenging the denial of parole in 2009 by the Board of Parole Hearings (“Board”). Petitioner has paid the filing fee.

DISCUSSION

A. Standard of Review

This Court may entertain a petition for writ of habeas corpus “in behalf of a person in custody pursuant to the judgment of a state court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a); Rose v. Hodges, 423 U.S. 19, 21 (1975).

A district court shall “award the writ or issue an order directing the respondent to

1 show cause why the writ should not be granted, unless it appears from the application that
2 the applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243.

3 **B. Petitioner’s Claims**

4 Petitioner seeks federal habeas relief based on the ground that the Board’s decision
5 to deny parole was not supported by “some evidence” bearing an indicia of reliability.
6 (Pet. Attach. at 18-25.)

7 For the purposes of habeas federal habeas review, a California prisoner is entitled
8 to only “minimal” procedural protections in connection with a parole suitability
9 determination. Swarthout v. Cooke, 131 S. Ct. 859, 862 (2011). The procedural
10 protections to which the prisoner is entitled under the Due Process Clause of the
11 Fourteenth Amendment are limited to an opportunity to be heard and a statement of the
12 reasons why parole was denied. Id. Petitioner makes no allegation in the petition to
13 indicate that he did not receive at least this amount of process. The Constitution does not
14 require more. Id. at 5.

15 Whether the Board’s decision was supported by some reliable evidence of current
16 dangerousness is irrelevant in federal habeas. The Supreme Court has made clear that “it
17 is no federal concern... whether California’s ‘some evidence’ rule of judicial review (a
18 procedure beyond what the Constitution demands) was correctly applied.” Id. at 6. In
19 light of the Supreme Court’s determination that due process does not require that there be
20 any amount of evidence to support the parole denial, Petitioner’s claim fails to state a
21 cognizable claim for relief.

22
23 **CONCLUSION**

24 For the foregoing reasons, the petition for a writ of habeas corpus is **DISMISSED**
25 for failure to state a cognizable claim for relief.

26 Pursuant to Rule 11 of the Rules Governing Section 2254 Cases, a certificate of
27 appealability (“COA”) under 28 U.S.C. § 2253(c) is **DENIED** because it cannot be said
28 that “reasonable jurists” would find the district court’s assessment of the constitution

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claims debatable or wrong. Slack v. McDaniel, 529 U.S. 473, 484 (2000).

DATED: 7/6/2012



EDWARD J. DAVILA
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

JAMES WHEELAND,
Petitioner,

Case Number: CV11-02310 EJD

CERTIFICATE OF SERVICE

v.

RANDY GROUNDS, Warden,
Respondent.

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

That on 7/6/2012, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

James Wheeland F-93221
Soledad State Prison
P. O. Box 689
Soledad, CA 93960-0689

Dated: 7/6/2012

Richard W. Wieking, Clerk
/s/By: Elizabeth Garcia, Deputy Clerk