

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

JEFFERSON D. WALKER,)	No. C 11-2447 LHK (PR)
)	
Petitioner,)	ORDER DENYING PETITION FOR
)	WRIT OF HABEAS CORPUS;
v.)	DENYING CERTIFICATE OF
)	APPEALABILITY
WARDEN RANDY GROUNDS,)	
)	
Respondent.)	
)	

Petitioner, a state prisoner proceeding *pro se*, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging a decision by the California Board of Parole Hearings (“Board”) in 2009 finding him unsuitable for parole. Respondent was ordered to show cause why the writ should not be granted. Respondent filed an answer with a supporting memorandum and exhibits, and Petitioner filed a traverse. For the reasons discussed below, the petition is DENIED.

BACKGROUND

In 1982, Petitioner was sentenced to a term of 25 years-to-life in state prison after being convicted of first degree murder and related offenses in Alameda County Superior Court. At his parole suitability hearing on August 11, 2009, the Board found Petitioner to be unsuitable for parole. Petitioner challenged this decision unsuccessfully in state habeas petitions filed in all

1 three levels of the California courts. Petitioner thereafter filed the instant petition.

2 DISCUSSION

3 I. Standard of Review

4 This Court may entertain a petition for writ of habeas corpus “in behalf of a person in
5 custody pursuant to the judgment of a State court only on the ground that he is in custody in
6 violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a). The
7 petition may not be granted with respect to any claim that was adjudicated on the merits in state
8 court unless the state court’s adjudication of the claim: “(1) resulted in a decision that was
9 contrary to, or involved an unreasonable application of, clearly established Federal law, as
10 determined by the Supreme Court of the United States; or (2) resulted in a decision that was
11 based on an unreasonable determination of the facts in light of the evidence presented in the
12 State court proceeding.” 28 U.S.C. § 2254(d).

13 “Under the ‘contrary to’ clause, a federal habeas court may grant the writ if the state
14 court arrives at a conclusion opposite to that reached by [the Supreme] Court on a question of
15 law or if the state court decides a case differently than [the] Court has on a set of materially
16 indistinguishable facts.” *Williams v. Taylor*, 529 U.S. 362, 412-13 (2000). “Under the
17 ‘reasonable application clause,’ a federal habeas court may grant the writ if the state court
18 identifies the correct governing legal principle from [the] Court’s decisions but unreasonably
19 applies that principle to the facts of the prisoner’s case.” *Id.* at 413.

20 “[A] federal habeas court may not issue the writ simply because the court concludes in its
21 independent judgment that the relevant state-court decision applied clearly established federal
22 law erroneously or incorrectly. Rather, the application must also be unreasonable.” *Id.* at 411.
23 A federal habeas court making the “unreasonable application” inquiry should ask whether the
24 state court’s application of clearly established federal law was “objectively unreasonable.” *Id.* at
25 409.

26 The only definitive source of clearly established federal law under 28 U.S.C. § 2254(d) is
27 in the holdings (as opposed to the dicta) of the Supreme Court as of the time of the state court
28

1 decision. *Id.* at 412. Clearly established federal law is defined as “the governing legal principle
2 or principles set forth by the Supreme Court.” *Lockyer v. Andrade*, 538 U.S. 63, 71-72 (2003).
3 Circuit law may be “persuasive authority” for purposes of determining whether a state court
4 decision is an unreasonable application of Supreme Court precedent, however, only the Supreme
5 Court’s holdings are binding on the state courts, and only those holdings need be “reasonably”
6 applied. *Clark v. Murphy*, 331 F.3d 1062, 1069 (9th Cir. 2003).

7 II. Petitioner’s Claims

8 Petitioner claims that his right to due process was violated because he was not permitted
9 to respond to the victim’s next of kin’s statements at Petitioner’s parole suitability hearing before
10 the Board.¹ Much of Petitioner’s claim also challenges the veracity of the statements made by
11 the victim’s next of kin at his parole hearing.

12 The United States Supreme Court has held that the Due Process Clause of the Fourteenth
13 Amendment to the United States Constitution entitles a California prisoner to only “minimal”
14 procedural protections in connection with a parole suitability determination. *Swarthout v.*
15 *Cooke*, 131 S. Ct. 859, 862 (2011) (per curiam). Specifically, the Due Process Clause only
16 entitles a California prisoner to an opportunity to be heard and a statement of the reasons why
17 parole was denied. *Id.* The parole hearing transcript makes clear that Petitioner was given those
18 minimum protections. (Dkt. No. 6-8 at 45 - Dkt. No. 6-10 at 6; Dkt. No. 6-10 at 29 - Dkt. No. 6-
19 11 at 3.) Thus, Petitioner’s allegation fails to state a cognizable claim for federal habeas relief.
20 *See id.*

21 Moreover, even assuming there was constitutional error, Petitioner cannot demonstrate
22 that such an error had a substantial or injurious effect on the outcome. *See Brecht v.*
23 *Abrahamson*, 507 U.S. 619, 637-38 (1993). A review of the transcript from the parole hearing
24 demonstrates that the Board’s denial was based on several factors including, *inter alia*, the

25
26 ¹ In the Court’s order to show cause, the Court recognized that Petitioner’s petition also
27 raised a claim that California Penal Code § 3043(b) was unconstitutionally broad. However,
28 Petitioner opted to withdraw this claim. (Traverse at 2.) Accordingly, this claim is
DISMISSED.

1 gravity of the underlying commitment offense, Petitioner's social history, Petitioner's past and
2 present mental state, Petitioner's past and present attitude about the underlying crime, and
3 Petitioner's lack of insight into the causative factors of the crime. (Dkt. No. 6-10 at 29-32.)
4 Thus, even without the testimonies of the victim's next of kin, the result of Petitioner's parole
5 suitability hearing would not have been different. *See In re Weider*, 145 Cal. Capp. 4th 570,
6 161-62 (2006) (concluding that if the Board finds no evidence of unsuitability of parole, it
7 cannot rely solely on opposition from the District Attorney and victim's family's statements to
8 deny parole).

9 **CONCLUSION**

10 The petition for a writ of habeas corpus is DENIED.

11 Petitioner has failed to make a substantial showing that his claim amounted to a denial of
12 his constitutional rights or demonstrate that a reasonable jurist would find the denial of his claim
13 debatable or wrong. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Consequently, no certificate
14 of appealability is warranted in this case.

15 The Clerk shall enter judgment and close the file.

16 IT IS SO ORDERED.

17 DATED: 3/6/13

18 
19 LUCY H. KOH
20 United States District Judge
21
22
23
24
25
26
27
28