

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

FEB 22 2018

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

FRANCISCO ARGON,

Petitioner-Appellant,

v.

CALIFORNIA DEPARTMENT OF
CORRECTIONS AND
REHABILITATION; BPH,

Respondents-Appellees.

No. 17-15292

D.C. No. 2:16-cv-02826-WBS-AC
Eastern District of California,
Sacramento

ORDER

Before: TROTT and FISHER, Circuit Judges.

The motion for reconsideration (Docket Entry No. 21) is denied. *See* 9th
Cir. R. 27-10.

To the extent appellant seeks an order compelling discovery or other relief,
the request (Docket Entry No. 23) is denied.

No further filings will be entertained in this closed case.

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D.C. No. 2:16-cv-02826-WBS-AC
Eastern District of California,
Sacramento

ORDER

Before: CALLAHAN and M. SMITH, Circuit Judges.

The request for a certificate of appealability is denied because appellant has not made a “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2); *see also Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003); *Hayward v. Marshall*, 603 F.3d 546, 552-54 (9th Cir. 2010) (en banc) (habeas challenge to parole decision requires a certificate of appealability when underlying conviction and sentence issued from a state court), *overruled on other grounds by Swarthout v. Cooke*, 562 U.S. 216 (2011).

Any pending motions are denied as moot.

DENIED.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

FRANCISCO ARGON,

Petitioner,

v.

CDCR, et al.,

Respondents.

No. 2:16-cv-2826 WBS AC P

ORDER

Petitioner, a state prisoner proceeding pro se, has filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On January 4, 2017, the magistrate judge filed findings and recommendations herein which were served on petitioner and which contained notice to petitioner that any objections to the findings and recommendations were to be filed within twenty-one days. ECF No. 9. Petitioner has filed objections to the findings and recommendations. ECF No. 10.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this court has conducted a de novo review of this case. Having carefully reviewed the entire file, the court finds the findings and recommendations to be supported by the record and by proper analysis.

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Accordingly, IT IS HEREBY ORDERED that:

1. The findings and recommendations filed January 4, 2017 (ECF No. 9), are adopted in full;
2. Petitioner's application for a writ of habeas corpus is dismissed;
3. For the reasons discussed in the magistrate judge's findings and recommendations, the court declines to issue the certificate of appealability referenced in 28 U.S.C. § 2253.

Dated: January 27, 2017



WILLIAM B. SHUBB

UNITED STATES DISTRICT JUDGE

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

FRANCISCO ARGON,

Petitioner,

v.

CDCR, et al.,

Respondents.

No. 2:16-cv-2826 WBS AC P

ORDER AND FINDINGS AND
RECOMMENDATIONS

Petitioner, a state prisoner proceeding pro se, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

I. Application to Proceed In Forma Pauperis

Petitioner has not filed an in forma pauperis affidavit or paid the required filing fee. See 28 U.S.C. §§ 1914(a); 1915(a). However, the court will not assess a filing fee at this time. Instead, the undersigned will recommend summary dismissal of the petition.

II. Petitioner's Allegations

Petitioner challenges a July 2015 decision by the Board of Parole Hearings (Board), denying him parole. ECF No. 1 at 1. He asserts that his due process rights were violated when the Board failed to make an impartial decision because he had filed a 602 appeal. Id. at 5. Petitioner also contends that the Board erred in finding he had insufficient credibility, did not

1 have an appropriate attitude towards the crime, had instances of serious institutional misconduct,
2 and had insufficient institutional programming. Id. at 7-12.

3 III. Discussion

4 Rule 4 of the Habeas Rules requires the court to summarily dismiss a habeas petition “[i]f
5 it plainly appears from the petition and any exhibits annexed to it that the petitioner is not entitled
6 to relief in the district court.” As set forth below, the petition fails to state a cognizable claim for
7 relief and will be dismissed.

8 The United States Supreme Court in 2011 overruled a line of Ninth Circuit precedent that
9 had supported habeas review of parole denials in California cases. Swarthout v. Cooke, 562 U.S.
10 216, 219 (2011). The Supreme Court held that federal habeas jurisdiction does not extend to
11 review of the evidentiary basis for state parole decisions. Id. Because habeas relief is not
12 available for errors of state law, and because the Due Process Clause does not require correct
13 application of California’s “some evidence” standard for denial of parole, federal courts may not
14 intervene in parole decisions as long as minimum procedural protections are provided. Id. at 219-
15 20. The protection afforded by the federal Due Process Clause to California parole decisions
16 consists solely of the “minimum” procedural requirements set forth in Greenholtz v. Inmates of
17 Neb. Penal & Corr. Complex, 442 U.S. 1 (1979). Cooke, 562 U.S. at 220. Specifically, that
18 petitioner was provided with “an opportunity to be heard and . . . a statement of the reasons why
19 parole was denied.” Id. (citing Greenholtz, 442 U.S. at 16).

20 The transcript attached to the petition make clear that petitioner was present at the hearing,
21 represented by counsel, afforded an interpreter, and provided a statement of the reasons parole
22 was denied. ECF No. 1 at 58-185. “[T]he beginning and the end of the federal habeas courts’
23 inquiry” is whether petitioner received “the minimum procedures adequate for due-process
24 protection.” Cooke, 562 U.S. at 220. The Ninth Circuit has acknowledged that after Cooke,
25 substantive challenges to parole decisions are not cognizable in habeas. Roberts v. Hartley, 640
26 F.3d 1042, 1046 (9th Cir. 2011). Petitioner received all the process he was due and his challenge
27 to the denial of parole is therefore not cognizable.

28 Petitioner has also filed a letter in which he appears to make allegations that correctional

1 officers are retaliating against him for filing this petition and he requests unspecified relief. ECF
2 No. 3. Petitioner is advised that claims concerning the conditions of his confinement and
3 violations of his constitutional rights are properly raised in a civil rights complaint filed pursuant
4 to 42 U.S.C. § 1983, which provides a remedy for violations of civil rights by state actors.
5 Therefore, petitioner must bring these claims in a civil rights action after the inmate grievance
6 process has been properly exhausted.

7 Accordingly, IT IS HEREBY ORDERED that:

- 8 1. Petitioner's request for unspecified relief (ECF No. 3) is denied.
9 2. The Clerk of the Court is directed to send petitioner a copy of the prisoner complaint
10 form used in this district.

11 IT IS FURTHER RECOMMENDED that:

- 12 1. Petitioner's application for a writ of habeas corpus be dismissed.
13 2. No certificate of appealability shall issue.

14 These findings and recommendations are submitted to the United States District Judge
15 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one days
16 after being served with these findings and recommendations, petitioner may file written
17 objections with the court. Such a document should be captioned "Objections to Magistrate
18 Judge's Findings and Recommendations." Petitioner is advised that failure to file objections
19 within the specified time may waive the right to appeal the District Court's order. Martinez v.
20 Ylst, 951 F.2d 1153 (9th Cir. 1991).

21 DATED: December 14, 2016

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23 ALLISON CLAIRE
24 UNITED STATES MAGISTRATE JUDGE
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**Additional material
from this filing is
available in the
Clerk's Office.**