

JUL 06 2010

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARIO CASTILLO,

Petitioner - Appellant,

v.

MENDOZA-POWERS, Warden,

Respondent - Appellee.

No. 08-17168

D.C. No. 1:07-cv-00814-OWW

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Oliver W. Wanger, District Judge, Presiding

Submitted June 29, 2010**

Before: ALARCÓN, LEAVY, and GRABER, Circuit Judges.

California state prisoner Mario Castillo appeals pro se from the district court's judgment denying his 28 U.S.C. § 2254 habeas petition. We have

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

jurisdiction under 28 U.S.C. § 2253,¹ and we affirm.

The State's argument that California inmates do not have a due process liberty interest in parole is foreclosed by *Hayward v. Marshall*, 603 F.3d 546, 561-63 (9th Cir. 2010) (en banc).

The state court did not unreasonably conclude that some evidence supports the California Board of Parole Hearings' 2006 decision to deny Castillo parole because the most recent psychological evaluation indicated that without further treatment and education, Castillo posed a substantial risk to the community. *See* 28 U.S.C. § 2254(d); *Hayward*, 603 F.3d at 563.

AFFIRMED.

¹ We certify for appeal, on our own motion, the issue of whether the California Board of Parole Hearings' 2006 decision to deny parole violated due process.