

OCT 13 2010

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ABE WILLIAMS, Jr.,

Petitioner - Appellant,

v.

M. L. KNOWLES, Warden; et al.,

Respondents - Appellees.

No. 06-16912

D.C. No. CV-03-00919-LKK

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Lawrence K. Karlton, District Judge, Presiding

Submitted September 13, 2010**

Before: SILVERMAN, CALLAHAN, and N.R. SMITH, Circuit Judges.

California state prisoner Abe Williams, Jr. 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.

Williams contends that the Board's 1999 decision to deny him parole was not supported by "some evidence" and therefore violated his due process rights. The state court did not unreasonably conclude that some evidence supports the Board's decision. *See* 28 U.S.C. § 2254(d); *see also Hayward v. Marshall*, 603 F.3d 546, 562-63 (9th Cir. 2010) (en banc).

Williams also contends that the Board's decision was based on a "no parole" policy and that he was entitled to parole, even though he had been found unsuitable, based on various provisions of the California Penal Code. The California court's rejection of these claims was not contrary to, or an unreasonable application of, clearly established Supreme Court law, and was not an unreasonable determination of the facts in light of the evidence. *See* 28 U.S.C. § 2254(d); *see also Irons v. Carey*, 505 F.3d 846, 851 & n.3 (9th Cir. 2007) (suitability for parole determination under California Penal Code section 3041(b) must precede the setting of a parole release date under California Penal Code section 3041(a)).

¹ We expand the certificate of appealability, on our own motion, to include the issue of whether the 1999 decision of the California Board of Prison Terms ("Board") to deny parole violated due process. We decline to expand the certificate of appealability to include any other issues raised by Williams.

We deny Williams' motion for removal of the stay of proceedings as moot.

AFFIRMED.