

MAR 14 2011

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JUAN MANUEL CHAVEZ,  
  
Petitioner - Appellant,  
  
v.  
  
A. P. KANE,  
  
Respondent - Appellee.

No. 07-56427

D.C. No. CV-05-03894-R

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
Manuel L. Real, District Judge, Presiding

Submitted March 8, 2011\*\*

Before: FARRIS, LEAVY, and BYBEE, Circuit Judges.

California state prisoner Juan Manuel Chavez appeals pro se from the district court's judgment denying his 28 U.S.C. § 2254 habeas petition. We dismiss.

---

\* 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).

The stay of this case is lifted because a decision has been filed in *Hayward v. Marshall*, 603 F.3d 546 (9th Cir. 2010) (en banc).

Chavez contends that the Board's 2002 decision to deny him parole was not supported by "some evidence" and therefore violated his due process rights. After briefing was completed in this case, this court held that a certificate of appealability ("COA") is required to challenge the denial of parole. *See Hayward v. Marshall*, 603 F.3d 546, 554-55 (9th Cir.2010) (en banc). Now the Supreme Court has held that the only federal right at issue in the parole context is procedural, and the only proper inquiry is what process the inmate received, not whether the state court decided the case correctly. *See Swarthout v. Cooke*, 131 S.Ct. 859, 862-63 (2011).

Because Chavez raises no procedural challenges regarding his parole hearing, a COA cannot issue. Further, because Chavez has not made a substantial showing of the denial of a constitutional right, we decline to certify his remaining claims. *See* 28 U.S.C. § 2253(c)(2).

**DISMISSED.**