

APR 11 2011

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JAMES ELMOND DUVAL,

Petitioner - Appellant,

v.

M. C. KRAMER,

Respondent - Appellee.

No. 09-15126

D.C. No. 2:08-cv-01591-JFM

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
John F. Moulds, Magistrate Judge, Presiding**

Submitted April 5, 2011***

Before: B. FLETCHER, CLIFTON, and BEA, Circuit Judges.

California state prisoner James Elmond Duval appeals from the district court's judgment denying his 28 U.S.C. § 2254 habeas petition. We have jurisdiction under 28 U.S.C. § 2253, and we affirm.

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

** The parties consented to proceed before a magistrate judge.

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

Duval contends that the Board of Parole's 2007 denial of parole violated his right to due process because it violated the terms of his plea agreement. This contention is belied by the record. The transcript of the plea colloquy clearly and unambiguously indicates that Duval would first become *eligible* for parole in approximately "thirteen and one-third years," that parole may never be granted, and that the plea contained no assurance that he would be released on a date certain.

Further, the district court did not abuse its discretion by declining to hold an evidentiary hearing on this claim. *See Schriro v. Landrigan*, 550 U.S. 465, 474 (2007) ("if the record refutes the applicant's factual allegations or otherwise precludes habeas relief, a district court is not required to hold an evidentiary hearing.").

Appellee's motion for judicial notice is granted. *See Smith v. Duncan*, 297 F.3d 809, 815 (9th Cir. 2002) (judicial notice taken of relevant state court documents with a direct relationship to appeal).

AFFIRMED.