

MAY 03 2011

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CLAUDE WITHERS,

Petitioner - Appellant,

v.

CLAUDE FINN, Warden,

Respondent - Appellee.

No. 08-17781

D.C. No. 2:05-cv-01485-FCD-
CMK

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Frank C. Damrell, Senior District Judge, Presiding

Submitted April 20, 2011**

Before: RYMER, THOMAS and PAEZ, Circuit Judges.

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

Withers contends that the Board of Prison Term's 2003 decision to deny him parole was not supported by "some evidence" and therefore violated his due process rights. 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); *Pearson v. Muntz*, No. 08-55728, 2011 WL 1238007(9th Cir. Apr. 5, 2011). Because Withers raises no procedural challenges, we affirm.

AFFIRMED.