

MAY 27 2011

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOHN CABALES,

Petitioner - Appellant,

v.

ROBERT AYERS, Jr. and BILL  
LOCKYER, Attorney General,

Respondents - Appellees.

No. 07-16403

D.C. No. CV-06-06673-MHP

MEMORANDUM\*

Appeal from the United States District Court  
for the Northern District of California  
Marilyn H. Patel, Senior District Judge, Presiding

Submitted May 24, 2011\*\*

Before: PREGERSON, THOMAS, and PAEZ, Circuit Judges.

California state prisoner, John Cabales, appeals pro se from the district court's judgment denying his 28 U.S.C. § 2254 petition. We dismiss.

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\* 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).

Cabales contends that the Board of Parole Hearings' 2005 decision to deny him parole was not supported by "some evidence" and therefore violated his due process rights. After the 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 when there is a liberty interest in parole 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, 863 (2011) (per curiam). Because Cabales raises no procedural challenges regarding his parole hearing, a COA may not issue on this claim, and we dismiss the appeal for lack of jurisdiction. *See* 28 U.S.C. § 2253(c)(2).

Further, because Cabales has not made a substantial showing of the denial of a constitutional right on his other claims, we decline to certify those claims.

**DISMISSED.**