

JUN 3 2011

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DANIEL P. ALLEN,

Petitioner - Appellant,

v.

CALIFORNIA MEN'S COLONY - EAST
and JOHN MARSHALL, Warden,

Respondents - Appellees.

No. 08-55616

D.C. No. 2:05-cv-01168-RSWL

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Ronald S.W. Lew, District Judge, Presiding

Submitted May 24, 2011**

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

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

Allen contends that his due process rights were violated by the Board's 2002

* 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).

decision finding him unsuitable for parole, because the decision was not supported by evidence of current dangerousness. 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, 863 (2011) (per curiam). Because Allen raises no procedural challenges regarding his parole hearing, a COA cannot issue, and we dismiss the appeal for lack of jurisdiction. *See* 28 U.S.C. § 2253(c)(2).

Further, because Allen has not has made a substantial showing of the denial of a constitutional right, we decline to certify his remaining claims. *See id.*

DISMISSED.