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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>LAWRENCE RAYBORN COWELL,</p> <p>Petitioner - Appellant,</p> <p>v.</p> <p>J. F. SALAZAR, Warden,</p> <p>Respondent - Appellee.</p>
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No. 07-55923

D.C. No. CV-06-00941-PSG

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Philip S. Gutierrez, District Judge, Presiding

Submitted May 24, 2011**

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

California state prisoner Lawrence Rayborn Cowell appeals from the district court’s judgment denying his 28 U.S.C. § 2254 habeas petition. We dismiss.

Cowell’s petition challenges the California Board of Parole Hearings’ (“the Board”) 2006 decision to deny him parole. In an order filed on February 17, 2011,

* 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).

Cowell was ordered to show cause why summary affirmance of the district court's judgment is not appropriate in light of the Supreme Court's decision in *Swarthout v. Cooke*, 113 S. Ct. 859 (2011) (per curiam). Cowell elected to show cause, and contends that *Cooke* does not foreclose habeas relief when the state action is arbitrary and capricious. Cowell's argument, however, is that the denial of parole was arbitrary and capricious because the Board's unsuitability findings were belied by the record. *Cooke* forecloses this court from analyzing the sufficiency of the evidence to support the Board's decision. *See id.* at 863 (stating that the only proper inquiry is what process the inmate received, not whether the state court decided the case correctly).

Because Cowell raises no procedural challenges regarding his parole hearing, a certificate of appealability cannot issue, and we dismiss the appeal for lack of jurisdiction. *See* 28 U.S.C. § 2253(c)(2); *see also, Hayward v. Marshall*, 603 F.3d 546, 554-55 (9th Cir. 2010) (en banc) (holding that a certificate of appealability is required to challenge the denial of parole).

Further, because Cowell has not has 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).

Cowell has filed a motion to permit late filing of his response to the order to show cause. Because his response was timely filed his motion is denied as moot.

DISMISSED.