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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RICHARD VELASCO,

Petitioner - Appellant,

v.

A. P. KANE,

Respondent - Appellee.

No. 08-55176

D.C. No. CV-05-00960-AHS

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Alicemarie H. Stotler, District Judge, Presiding

Submitted May 24, 2011**

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

California state prisoner Richard Velasco appeals pro se from the district court's judgment denying his 28 U.S.C. § 2254 habeas petition. We have

* 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).

jurisdiction under 28 U.S.C. § 2253,^{***} and we affirm.

Velasco contends that his right to due process was violated because he was denied parole in violation of the terms of his plea agreement. Specifically, Velasco contends, first, that his plea agreement set forth a determinate 15-year sentence, and, second, that the prosecutor violated his plea agreement when describing Velasco's crime before the Board. To the extent that Velasco's contentions are not foreclosed by *Swarthout v. Cooke*, 131 S. Ct. 859 (2011) (per curiam), they fail because the California court's rejection of these claims was neither contrary to nor an unreasonable application of federal law, nor based on an unreasonable determination of the facts. *See* 28 U.S.C. § 2254(d); *see also Ricketts v. Adamson*, 483 U.S. 1, 6 n.3 (1987) (construction of state court plea agreements is matter of state law).

AFFIRMED.

^{***} We certify for appeal, on our own motion, the issues of whether Velasco was entitled to a 15-year determinate sentence and whether the government breached the plea agreement in its testimony before the parole board. *See* 9th Cir. R. 22-1(e); *see also Hiivala v. Wood*, 195 F.3d 1098, 1104-05 (9th Cir. 1999) (per curiam).