

JUL 13 2011

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

WENDELL STUART,

Petitioner - Appellant,

v.

TOM L. CAREY, Warden; et al.,

Respondents - Appellees.

No. 08-16127

D.C. No. 2:03-CV-00128-MCE-
JFM

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Morrison C. England, District Judge, Presiding

Submitted July 12, 2011**

Before: SCHROEDER, ALARCÓN, and LEAVY, Circuit Judges.

California state prisoner Wendell Stuart appeals 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).

Stuart contends that the Board of Prison Term's 2001 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. *Swarthout v. Cooke*, 131 S. Ct. 859, 863 (2011); *Roberts v. Hartley*, 640 F.3d 1042, 1045-47 (9th Cir. 2011) (applying *Cooke*). Because Stuart raises no federal procedural challenges, we affirm.

AFFIRMED.