

OCT 26 2011

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOHN C. MONTUE,

Petitioner - Appellant,

v.

TERESA A. SCHWARTZ, Warden;
ATTORNEY GENERAL OF THE STATE
OF CALIFORNIA,

Respondents - Appellees.

No. 08-16624

D.C. No. 2:04-CV-01697-FCD

MEMORANDUM*

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

Submitted October 25, 2011**

Before: TROTT, GOULD, and RAWLINSON, Circuit Judges.

California state prisoner John C. Montue appeals pro se from 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).

Montue contends that the Board's 2002 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. *See Swarthout v. Cooke*, 131 S. Ct. 859, 863 (2011) (per curiam). Because Montue raises no procedural challenges, we affirm.

Respondent Teresa A. Schwartz's motion to strike and request for judicial notice are denied as moot.

AFFIRMED.