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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>DENNIS GARBUTT,</p> <p style="text-align: center;">Petitioner - Appellant,</p> <p>v.</p> <p>THOMAS L. CAREY, Warden; et al.,</p> <p style="text-align: center;">Respondents - Appellees.</p>

No. 08-17545

D.C. No. 2:05-cv-02130-GEB-KJM

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Garland E. Burrell, Jr., District Judge, Presiding

Submitted December 19, 2011**

Before: GOODWIN, WALLACE and McKEOWN, Circuit Judges.

California state prisoner Dennis Garbutt 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.

Garbutt contends that the Board’s 2004 decision to deny him parole was not supported by “some evidence” and therefore violated his due process rights. The

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

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 Garbutt raises no procedural challenges, we affirm.

We decline to expand the certificate of appealability to include Garbutt's uncertified claim that he was deprived of the benefits of his plea agreement as a result of the Board's decision finding him unsuitable for parole. *See* 28 U.S.C. § 2253(c)(2); 9th Cir. R. 22-1(e).

AFFIRMED.