

JUN 13 2013

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>THOMAS SCHUSTER,</p> <p>Petitioner - Appellant,</p> <p>v.</p> <p>J. F. SALAZAR, CVSP Warden,</p> <p>Respondent - Appellee.</p>

No. 10-17597

D.C. No. 1:07-cv-00903-AWI

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Anthony W. Ishii, District Judge, Presiding

Submitted June 10, 2013**

Before: HAWKINS, McKEOWN, and BERZON, Circuit Judges.

California state prisoner Thomas Schuster appeals pro se from the district court’s judgment denying his 28 U.S.C. § 2254 habeas petition challenging the Board of Parole Hearings’ (“Board”) decision denying him parole. We dismiss.

By order dated April 21, 2011, this court summarily affirmed the district

* 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).

court on the only claim certified for appeal: whether the denial of parole based on the “some evidence” rule violated Schuster’s due process rights. In supplemental briefing, Schuster contends that the Board’s denial of parole violates the terms of his plea agreement. We construe Schuster’s supplemental brief as a motion to expand the certificate of appealability. The record does not support Schuster’s argument that he was promised that he would be granted parole. Therefore, because Schuster has not made a substantial showing of the denial of a constitutional right as to this claim, Schuster’s motion is denied. *See* 28 U.S.C. § 2253(c)(2); 9th Cir. R. 22-1(e); *Hiivala v. Wood*, 195 F.3d 1098, 1104-05 (9th Cir. 1999) (per curiam).

DISMISSED.