

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAY 22 2008

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

JOHN C. MONTUE,

Petitioner - Appellant,

v.

TERESA A. SCHWARTZ; et al.,

Respondents - Appellees.

No. 06-16715

D.C. No. CV-04-02663-LKK

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Lawrence K. Karlton, District Judge, Presiding

Submitted May 20, 2008**

Before: PREGERSON, TASHIMA and GOULD, Circuit Judges.

California state prisoner John C. Montue appeals pro se from the district court's judgment dismissing his 28 U.S.C. § 2241 petition, in which he challenged

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

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

the Board of Prison Term's 1997 decision finding him ineligible for parole. We have jurisdiction pursuant to 28 U.S.C. §§ 1291 and 2253, and we affirm.

We conclude that the district court properly determined this petition was duplicative of the petition filed in district court case no. 98-01580. Therefore, the district court's judgment dismissing the petition is affirmed.

AFFIRMED.