

MAY 27 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>ROBERT CASTLE,</p> <p>Petitioner - Appellant,</p> <p>v.</p> <p>JEANNE S. WOODFORD, Director of California Department of Corrections,</p> <p>Respondent - Appellee.</p>

No. 06-55780

D.C. No. CV-05-00313-TJW

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Thomas J. Whelan, District Judge, Presiding

Submitted May 20, 2008**

Before: PREGERSON, TASHIMA, and GOULD, Circuit Judges.

California state prisoner Robert Castle appeals pro se from the district court's judgment denying his habeas petition under 28 U.S.C. § 2254. We have jurisdiction pursuant to 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 finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

As a threshold matter, we reject the state's contention that California prisoners do not have a liberty interest in parole. *See Sass v. Cal. Bd. of Prison Terms*, 461 F.3d 1123, 1127-28 (9th Cir. 2006).

Castle contends that the California Board of Prison Terms' ("Board") 2003 and 2004 decisions finding him unsuitable for parole resulted in his being incarcerated beyond the date contemplated in his plea agreement. We conclude that the California state court's decision denying this claim was not objectively unreasonable. *See Himes v. Thompson*, 336 F.3d 848, 852-53 (9th Cir. 2003); *cf. Brown v. Poole*, 337 F.3d 1155, 1159 (9th Cir. 2003).

Castle also contends that the Board's decisions violated his right to due process. However, there was no due process violation because some evidence supports the Board's decisions. *See Irons v. Carey*, 505 F.3d 846, 851 (9th Cir. 2007). Accordingly, the state court's decision rejecting Castle's claim was not contrary to, and did not involve an unreasonable application of, clearly established federal law, as determined by the Supreme Court of the United States. *See* 28 U.S.C. § 2254(d)(1); *see also Irons*, 505 F.3d at 851.

AFFIRMED.