

FILED

NOV 20 2007

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

HILARIO ARTURO CHICHIL,

Petitioner - Appellant,

v.

A. P. KANE, Warden,

Respondent - Appellee.

No. 06-17169

D.C. No. CV-05-01958-SI

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Susan Yvonne Illston, District Judge, Presiding

Submitted October 22, 2007**

Before: B. FLETCHER, WARDLAW, and IKUTA, Circuit Judges.

California state prisoner Hilario Arturo Chichil appeals *pro se* from the district court's judgment denying his habeas petition under 28 U.S.C. § 2254. We

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

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

have jurisdiction under 28 U.S.C. §§ 1291 and 2253. We review *de novo*, *Sass v. Cal. Bd. of Prison Terms*, 461 F.3d 1123, 1126 (9th Cir. 2006), and we affirm.

We reject as foreclosed appellee's contention that we lack jurisdiction to entertain this appeal because Chichil did not obtain a certificate of appealability. *See Rosas v. Nielsen*, 428 F.3d 1229, 1231-32 (9th Cir. 2005) (per curiam).

Chichil contends that the 2002 decision of the California Board of Prison Terms ("the Board") to deny him parole violated his due process rights. After reviewing the record, we conclude that "some evidence" supports the Board's decision. *See Superintendent v. Hill*, 472 U.S. 445, 455 (1985). Accordingly, the California Court of Appeal's decision was not an unreasonable application of federal law. *See* 28 U.S.C. § 2254(d)(1).

Furthermore, because the "some evidence" standard does not allow us to reweigh the evidence before the Board, we find no due process violation stemming from the Board's overlooking positive aspects of Chichil's record in order to find him unsuitable for parole. *See Hill*, 472 U.S. at 455.

Finally, to the extent Chichil asserts a violation of California law, we cannot grant federal habeas corpus relief on such a claim. *See Lewis v. Jeffers*, 497 U.S. 764, 780 (1990).

AFFIRMED.