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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JERRY JAY WRENN, Petitioner - Appellant, v. OREGON BOARD OF PAROLE AND POST-PRISON SUPERVISION; BRIAN BELLEQUE, Respondents - Appellees.	No. 08-35223 D.C. No. 06-CV-00343-AA MEMORANDUM[*]

Appeal from the United States District Court
for the District of Oregon
Ann L. Aiken, District Judge, Presiding

Argued and Submitted February 2, 2009
Portland, Oregon

Before: PAEZ and RAWLINSON, Circuit Judges, and JENKINS[**], District Judge.

Jerry Jay Wrenn (Wrenn) appeals the denial of his habeas petition.

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

[**] The Honorable Bruce S. Jenkins, Senior U.S. District Judge for the District of Utah, sitting by designation.

In denying Wrenn's *ex post facto* claim, the Oregon Court of Appeals relied on *Butler v. Bd. of Parole & Post-Prison Supervision*, 94 P.3d 149 (Or. Ct. App. 2004). *Butler* held that the modifications to the re-release voting procedure were procedural changes that created only a speculative risk of increased punishment. *Id.* at 153-54. This decision was neither contrary to, nor an unreasonable application of *Cal. Dep't of Corr. v. Morales*, 514 U.S. 499 (1995). *See id.* at 509 (holding that a revision must "produce[] a sufficient risk of increasing the measure of punishment attached to the covered crimes" to violate the Ex Post Facto Clause).

The district court acted within its discretion when denying Wrenn discovery, because the statistical data sought by Wrenn would not shed light on how any individual parole determination would be affected. *See Calderon v. United States Dist. Court*, 98 F.3d 1102, 1106 (9th Cir. 1996) ("[C]ourts should not allow prisoners to use federal discovery for fishing expeditions to investigate mere speculation.") (citations omitted).

AFFIRMED.