

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

OCT 09 2009

ROBERT LEE FRYBURGER,

Petitioner - Appellant,

v.

BEN CURRY,

Respondent - Appellee.

No. 07-16414

D.C. No. CV-06-04262-MHP

MEMORANDUM*

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

Appeal from the United States District Court
for the Northern District of California
Marilyn H. Patel, District Judge, Presiding

Submitted September 2, 2009**

Before: SKOPIL, LEAVY, and T.G. NELSON, Circuit Judges

Robert Lee Fryburger, a California state prisoner, appeals pro se the district court's denial of his 28 U.S.C. § 2254 habeas corpus petition. The district court rejected Fryburger's contention that he was entitled to parole because he had served fifteen years of his fifteen-years-to-life sentence. 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).

“There is no constitutional or inherent right of a convicted person to be conditionally released before the expiration of a valid sentence.” *Greenholtz v. Inmates of Nebraska Penal & Correctional Complex*, 442 U.S. 1, 7 (1979).

Nonetheless, a prisoner may acquire a liberty interest in parole if a state, through the use of mandatory language, creates a presumption that parole will be granted when certain designated conditions are satisfied. *See Board of Pardons v. Allen*, 482 U.S. 369, 377-78 (1987).

We agree with the district court that the prison’s calculation of a “maximum eligible parole date” did not create a liberty interest that Fryburger would be paroled on that date. “Under California law, prisoners serving an indeterminate sentence for second degree murder may serve up to life in prison but become eligible for parole consideration after serving minimum terms of confinement.” *Irons v. Carey*, 505 F.3d 846, 851 (9th Cir. 2007) (internal quotation marks omitted). Although a parole release date is set, parole may be denied if “the prisoner will pose an unreasonable risk of danger to society if released from prison.” *Id.*

AFFIRMED.