

UNITED STATES COURT OF APPEALS September 6, 2019
TENTH CIRCUIT Elisabeth A. Shumaker
Clerk of Court

JAMES SARDAKOWSKI,
Petitioner - Appellant,

v.

MIKE ROMERO, Warden,
Respondent - Appellee.

No. 19-1219
(D. Colo.)
(D.C. No. 1:18-CV-02925-WJM)

**ORDER DENYING CERTIFICATE
OF APPEALABILITY**

Before **HOLMES, MURPHY, and CARSON**, Circuit Judges.

James Sardakowski, a Colorado state prisoner serving an eighteen-year sentence for child abuse and a four-year sentence for assault in the second degree, filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 on November 11, 2018. In the application, Sardakowski alleged the Colorado Parole Board’s (“CPB”) decision to deny him parole was made in violation of the Americans with Disabilities Act and, thus, violated the Fourteenth Amendment. He also alleged the CPB violated his due process rights by denying him parole based on his lack of housing and failing to properly consider his risk of reoffending.

After considering CPB's response, the district court denied Sardakowski's § 2241 application. As to Sardakowski's Fourteenth Amendment claim, the court concluded the CPB did not categorically deny parole based on Sardakowski's mental disabilities. *See Thompson v. Davis*, 295 F.3d 890, 896, 898 (9th Cir. 2002) (recognizing the applicability of Title II of the ADA to state parole decisions). Instead, the court concluded, the CPB's decision was an individualized determination based on the severity and circumstances of the offense conduct, the lack of a suitable parole plan, and Sardakowski's failure to take his psychiatric medication. As to Sardakowski's procedural due process claim, the district court first concluded that Sardakowski does not have an entitlement to parole under Colorado's discretionary parole scheme and, thus, his claim failed. *See Greenholtz v. Inmates of Neb. Penal and Corr. Complex*, 442 U.S. 1, 7 (1979) (holding the Constitution does not create a protected liberty interest in a prisoner's release prior to the expiration of a valid sentence); *Straley v. Utah Bd. of Pardons*, 582 F.3d 1208, 1214 (10th Cir. 2009) (holding a state inmate "has no federal right to release on parole" when the state parole board has "complete discretion in making parole decisions"); *Thiret v. Kautzky*, 792 P.2d 801, 805 (Colo. 1990) (holding that Colorado inmates are subject to a discretionary parole system unless their offense of conviction was committed between July 1, 1979, and June 30, 1985). The court further concluded that the CPB's decision did not result in an "abridgement of Sardakowski's constitutional

rights.” *Wildermuth v. Furlong*, 147 F.3d 1234, 1236 (10th Cir. 1998) (quotation omitted) (“Where the denial of parole rests on one constitutionally valid ground, the Board’s consideration of an allegedly invalid ground would not violate a constitutional right.” (quotation and alterations omitted)).¹

Sardakowski now seeks a certificate of appealability (“COA”) to enable him to appeal the district court’s denial of his § 2241 application. *See* 28 U.S.C. § 2253(c)(1)(A). This court will issue a COA “only if the applicant has made a substantial showing of the denial of a constitutional right.” *Id.* § 2253(c)(2). To satisfy this standard, Sardakowski must demonstrate “that jurists of reason could disagree with the district court’s resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

This court has reviewed Sardakowski’s application for a COA and appellate brief, the district court’s order, and the entire record on appeal pursuant to the framework set out by the Supreme Court in *Miller-El* and concludes Sardakowski is not entitled to a COA. The district court’s resolution of Sardakowski’s claims is not reasonably subject to debate and the claims are not

¹In reaching this decision, the district court necessarily interpreted *Wildermuth* as permitting a state inmate to raise a substantive due process claim without identifying a liberty interest in parole. Because reasonable jurists could not debate the court’s resolution of such claim, assuming it exists, it is not necessary for us to determine whether *Wildermuth* so held.

adequate to deserve further proceedings. Accordingly, Sardakowski is not entitled to a COA. 28 U.S.C. § 2253(c)(2).

This court **denies** Sardakowski's request for a COA and **dismisses** this appeal. Sardakowski's motion to proceed *in forma pauperis* on appeal is **granted**.

ENTERED FOR THE COURT

Michael R. Murphy
Circuit Judge