

APR 28 2011

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>RUSSELL BOWDEN,</p> <p>Petitioner - Appellant,</p> <p>v.</p> <p>KEN CLARK, Warden, Warden,</p> <p>Respondent - Appellee.</p>

No. 08-17736

D.C. No. 1:08-cv-01433-GSA

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Gary S. Austin, Magistrate Judge, Presiding

Submitted April 21, 2011**

Before: GOODWIN, WALLACE, and CLIFTON, Circuit Judges.

California state prisoner Russell Bowden appeals pro se from the district court's dismissal of his 28 U.S.C. § 2254 habeas petition. We have jurisdiction under 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 concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

After this court issued its January 10, 2011 order granting a certificate of appealability on whether the district court properly summarily dismissed Bowden's habeas petition and whether Bowden should have been given leave to amend, the Supreme Court decided *Swarthout v. Cooke*, 131 S. Ct. 859 (2011) (per curiam). Liberally construed, Bowden's habeas petition essentially contended that the decision to deny him parole was not supported by "some evidence" and therefore violated his due process rights. The only federal right at issue in the parole context is procedural, and the only proper inquiry is what process the inmate received, not whether the state court decided the case correctly. *See id.* at 863. Because Bowden raises no procedural challenges, we affirm.

AFFIRMED.