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AUG 05 2011

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U.S. COURT OF APPEALS

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CELSO LEON, Petitioner - Appellee, v. A. P. KANE, Warden, Respondent - Appellant.	No. 10-15329 D.C. No. 2:04-cv-02631-FCD MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Frank C. Damrell, Jr., District Judge, Presiding

Submitted August 2, 2011**

Before: RYMER, IKUTA, and N.R. SMITH, Circuit Judges.

Warden A.P. Kane appeals from the district court's grant of Celso Leon's 28 U.S.C. § 2254 habeas petition. We have jurisdiction under 28 U.S.C. § 2253, and we reverse.

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

While this appeal was pending, the Supreme Court decided *Swarthout v. Cooke*, 131 S. Ct. 859 (2011) (per curiam). In that case, the Court stated that "it is no federal concern . . . whether California's 'some evidence' rule of judicial review (a procedure beyond what the Constitution demands) was correctly applied." *Id.* at 863. The federal Due Process Clause requires only that a California inmate receive "an opportunity to be heard and . . . a statement of the reasons why parole was denied." *See id.* at 862.

Leon was afforded an opportunity to be heard and provided a statement of the reasons why parole was denied. The district court nevertheless granted him relief on the ground that the denial of parole was not supported by "some evidence" of current dangerousness. Because this is not a proper ground for federal habeas relief, we reverse. *See Pearson v. Muntz*, 639 F.3d 1185, 1191 (9th Cir. 2011).

REVERSED.