

DEC 23 2011

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CLARENCE YOUNG,

Petitioner - Appellee,

v.

D. K. SISTO,

Respondent - Appellant.

No. 10-16667

D.C. No. 2:06-cv-01103-VAP

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Virginia A. Phillips, District Judge, Presiding

Submitted December 19, 2011**

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

D.K. Sisto appeals from the district court's judgment granting California state prisoner Clarence Young's 28 U.S.C. § 2254 habeas petition. We have jurisdiction under 28 U.S.C. § 2253, and we vacate and remand.

* 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).

The district court granted relief in connection with the Board of Prison Terms' 2004 decision to deny Young parole. Intervening Supreme Court authority explains that 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 Swarthout v. Cooke*, 131 S. Ct. 859, 862-63 (2011) (per curiam). Because Young raised no procedural challenges, we vacate the district court's judgment.

Sisto's request for judicial notice is denied.

Young's request to file a supplemental brief is granted. The supplemental brief, received March 15, 2011, is deemed filed.

VACATED and REMANDED.