

DEC 23 2011

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>LEWIS HAGGARD,</p> <p>Petitioner - Appellee,</p> <p>v.</p> <p>BEN CURRY, Warden,</p> <p>Respondent - Appellant.</p>

No. 10-16819

D.C. No. 3:06-cv-07658-SI

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Susan Illston, District Judge, Presiding

Submitted December 19, 2011**

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

Ben Curry appeals from the district court’s judgment granting California state prisoner Lewis Haggard’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 Haggard 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 Haggard raised no procedural challenges, we reverse the district court's judgment.

We express no opinion on the merits of Haggard's claims concerning his plea agreement. We leave to the district court resolution of those claims on remand.

VACATED and REMANDED.