

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JAN 20 2012

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

GEORGE LEDESMA,

Petitioner - Appellee,

v.

JOHN MARSHALL,

Respondent - Appellant.

No. 09-16671

D.C. No. 1:08-cv-00309-JTM-
CAB

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Jeffrey T. Miller, Senior District Judge, Presiding

Submitted December 5, 2011**
San Francisco, California

Before: SCHROEDER, O'SCANNLAIN, and BERZON, Circuit Judges.

Warden John Marshall contends that the district court erred when it granted George Ledesma's petition for a writ of habeas corpus under 28 U.S.C. § 2254(d). We agree. When he was denied parole in November 2006, Ledesma received all

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

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

process that was due to him. *See Swarthout v. Cooke*, 131 S. Ct. 859, 862–63 (2011) (per curiam). *Swarthout*—decided while this appeal was pending—makes clear that federal habeas relief is not available based on the misapplication of California’s “some evidence” rule of judicial review. *See id.* at 861–63.

We direct the district court to enter judgment for Marshall and to deny Ledesma’s habeas petition.

REVERSED and REMANDED.