

FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DUSHUN A. WHITE, <i>Petitioner-Appellant,</i> v. A. P. KANE, <i>Respondent-Appellee.</i>

No. 06-55940
D.C. No.
CV-05-08237-GAF
ORDER

Appeal from the United States District Court
for the Central District of California
Gary A. Feess, District Judge, Presiding

Submitted February 7, 2011*
Pasadena, California

Filed February 14, 2011

Before: Dorothy W. Nelson, Stephen Reinhardt, and
N. Randy Smith, Circuit Judges.

COUNSEL

Arthur Henry Weed, Santa Barbara, California, for the
petitioner-appellant.

Heather Bushman, Deputy Attorney General, Office of the
California Attorney General, Los Angeles, California, for the
respondent-appellee.

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

ORDER

Respondent-Appellee Kane's motion to dismiss this case is granted. In light of the Supreme Court's recent decision in *Swarthout v. Cooke*, ___ S. Ct. ___, 2011 WL 197627 (Jan. 24, 2011), Petitioner White's request for a certificate of appealability is foreclosed.

The motion to dismiss is GRANTED.

DISMISSED.