

FOR PUBLICATION

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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DUSHUN A. WHITE,  
*Petitioner-Appellant,*  
v.  
A. P. KANE,  
*Respondent-Appellee.*

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

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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.

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**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.

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\* 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.**