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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ARTHUR MARTINEZ,

Petitioner - Appellee,

v.

JOHN MARSHALL, Warden,

Respondent - Appellant.

No. 10-56029

D.C. No. 2:06-cv-07131-DDP

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Dean D. Pregerson, District Judge, Presiding

Submitted February 11, 2013 **

Before: FERNANDEZ, TASHIMA, and WARDLAW, Circuit Judges.

Warden John Marshall appeals from the district court's judgment granting Arthur Martinez's 28 U.S.C. § 2254 habeas petition and its subsequent order denying Marshall's motion for reconsideration. We have jurisdiction under 28

* 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).

U.S.C. § 2253, and we vacate and remand.

The district court granted Martinez relief on the ground that the state courts had unreasonably applied federal law by concluding that “some evidence” supported the Governor’s 2004 decision to deny Martinez parole. We review the district court’s decision de novo. *See Lambert v. Blodgett*, 393 F.3d 943, 964 (9th Cir. 2004). While this appeal was pending, the Supreme Court held 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). We accordingly vacate the judgment.

We remand for further proceedings on Martinez’s remaining claims.

VACATED and REMANDED.