

1 7, 2010, this Court issued Findings and Recommendation recommending that the motion to
2 dismiss be denied (Findings and Recommendation, ECF No. 16.)

3 In light of the recent United States Supreme Court Decision in Swarthout v. Cooke, ____
4 U.S. ____, No. 10-333, 2011 U.S. LEXIS 1067 (Jan. 24, 2011), discussed in more detail below,
5 this Court hereby VACATES the findings and recommendations issued on September 7, 2010
6 and will address the merits of the petition. "An application for writ of habeas corpus may be
7 denied on the merits, notwithstanding the failure of the applicant to exhaust remedies available
8 in the courts of the state." 28 U.S.C. § 2254(b)(2).

9 Because California's statutory parole scheme guarantees that prisoners will not be
10 denied parole absent some evidence of present dangerousness, the Ninth Circuit Court of
11 Appeals held that California law creates a liberty interest in parole that may be enforced under
12 the Due Process Clause. Hayward v. Marshall, 602 F.3d 546, 561-563 (9th Cir. 2010);
13 Pearson v. Muntz, 606 F.3d 606, 608-609 (9th Cir. 2010); Cooke v. Solis, 606 F.3d 1206, 1213
14 (9th Cir. 2010), *rev'd*, Swarthout v. Cooke, 2011 U.S. LEXIS 1067. The Ninth Circuit instructed
15 reviewing federal district courts to determine whether California's application of California's
16 "some evidence" rule was unreasonable or was based on an unreasonable determination of
17 the facts in light of the evidence. Hayward, 603 F.3d at 563; Pearson, 606 F.3d at 608.

18 On January 24, 2011, the Supreme Court issued a *per curiam* opinion in Swarthout v.
19 Cooke, 2011 U.S. LEXIS 1067. In Swarthout, the Supreme Court held that "the responsibility
20 for assuring that the constitutionally adequate procedures governing California's parole system
21 are properly applied rests with California courts, and is no part of the Ninth Circuit's business."
22 Id. at *10. The federal habeas court's inquiry into whether a prisoner denied parole received
23 due process is limited to determining whether the prisoner "was allowed an opportunity to be
24 heard and was provided a statement of the reasons why parole was denied." Id. at *6, *citing*,
25 Greenholtz v. Inmates of Neb. Penal and Correctional Complex, 442 U.S. 1, 16 (1979).
26 Review of the instant case reveals Petitioner was present at his parole hearing, was given an
27 opportunity to be heard, and was provided a statement of reasons for the parole board's
28 decision. (See Answer Ex. A, ECF No. 19-1.) According to the Supreme Court, this is "the

1 beginning and the end of the federal habeas courts' inquiry into whether [the petitioner]
2 received due process." Swarthout, 2011 U.S. LEXIS 1067 at *7. "The Constitution does not
3 require more [process]." Greenholtz, 442 U.S. at 16.

4 Given the holding in Swarthout, this Court must and does conclude that the instant
5 petition does not present cognizable claims for relief and must be summarily dismissed.

6 **RECOMMENDATION**

7 Accordingly, the Court HEREBY RECOMMENDS that the Petitioner's Petition be
8 SUMMARILY DISMISSED with prejudice for failure to state cognizable claims for relief.

9 This Findings and Recommendation is submitted to the Honorable Oliver W. Wanger,
10 United States District Court Judge, pursuant to the provisions of 28 U.S.C. section 636
11 (b)(1)(B) and Rule 304 of the Local Rules of Practice for the United States District Court,
12 Eastern District of California. Within thirty (30) days after the date of service of this Findings
13 and Recommendation, any party may file written objections with the Court and serve a copy
14 on all parties. Such a document should be captioned "Objections to Magistrate Judge's
15 Findings and Recommendation." Replies to the Objections shall be served and filed within
16 fourteen (14) days after service of the Objections. The Finding and Recommendation will then
17 be submitted to the District Court for review of the Magistrate Judge's ruling pursuant to 28
18 U.S.C. § 636 (b)(1)(c). The parties are advised that failure to file objections within the
19 specified time may waive the right to appeal the Order of the District Court. Martinez v. Ylst,
20 951 F.2d 1153 (9th Cir. 1991).

21
22 IT IS SO ORDERED.

23 Dated: February 3, 2011

1st Michael J. Seng
UNITED STATES MAGISTRATE JUDGE