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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

TOBY WADE,

Petitioner,

v.

J. HARLEY,

Respondent.

1:10-cv-00566-AWI-DLB (HC)

ORDER VACATING ORDER DIRECTING  
RESPONSE TO PETITION ISSUED APRIL 7,  
2010

[Doc. 4]

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

Petitioner filed the instant petition for writ of habeas corpus on April 1, 2010. Petitioner challenges a California Board of Parole hearing finding him unsuitable for release.

On April 7, 2010, this Court issued an Order directing Respondent to file a response to the petition.

On January 24, 2011, the Supreme Court issued its opinion in Swarthout v. Cooke, \_\_\_ U.S. \_\_\_, \_\_\_ S.Ct. \_\_\_, 2011 WL 197627 (Jan. 24, 2011) (per curiam). This decision renders the claims presented in the petition noncognizable for purposes of federal habeas review.

Accordingly, the April 7, 2010, Order to Respond is HEREBY VACATED, and briefing is suspended pending further order of the Court.

IT IS SO ORDERED.

Dated: January 27, 2011

/s/ Dennis L. Beck  
UNITED STATES MAGISTRATE JUDGE