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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

BENEDICT BATO,

1:10-cv-02205-SMS (HC)

Petitioner,

ORDER VACATING ORDER DIRECTING
RESPONSE TO PETITION ISSUED
DECEMBER 10, 2010

v.

[Doc. 5]

J.D. HARTLEY,

Respondent.

_____ /

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 November 29, 2010. Petitioner challenges a California Board of Parole hearing finding him unsuitable for release.

On December 10, 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 December 10, 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/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE