

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

FRANK KENNETH BENSON,  
  
Petitioner,  
  
vs.  
  
D. K. SISTO, Warden, California State  
Prison, Solano,  
  
Respondent.

No. 2:07-cv-02244-JKS  
  
ORDER DENYING THE PETITION  
ON REMAND

Frank Kenneth Benson filed a Petition for Habeas Corpus under 28 U.S.C. § 2254. This Court granted the Writ in a Memorandum Decision,<sup>1</sup> and entered Judgment accordingly.<sup>2</sup> On appeal the Court of Appeals, citing the intervening decision in *Swarthout v. Cooke*, 131 S. Ct. 859, 863 (2011) (per curiam), vacated this Court’s Judgment and remanded the matter.<sup>3</sup> Because Benson has failed to raise any issue of constitutional dimension, he is not entitled to relief.

**IT IS THEREFORE ORDERED THAT** the Judgment herein entered on August 12, 2011, at Docket No. 20 is hereby **VACATED**, and the Petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus is **DENIED**.

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<sup>1</sup> *Benson v. Sisto*, 2010 WL 3211891 (E.D. Cal. Aug. 12, 2010)

<sup>2</sup> Docket No. 20.

<sup>3</sup> *Benson v. Sisto*, No. 10-16945, 2011 WL 4588827 (9th Cir. Oct. 5, 2011).

**IT IS FURTHER ORDERED THAT** the Court declines to issue a Certificate of Appealability.<sup>4</sup> Any further request for a Certificate of Appealability must be addressed to the Court of Appeals.<sup>5</sup>

The Clerk of the Court is to enter judgment accordingly.

Dated: November 1, 2011.

/s/ James K. Singleton, Jr.  
JAMES K. SINGLETON, JR.  
United States District Judge

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<sup>4</sup> 28 U.S.C. § 2253(c); *Banks v. Dretke*, 540 U.S. 668, 705 (2004) (“To obtain a certificate of appealability a prisoner must ‘demonstrat[e] that jurists of reason could disagree with the district court’s resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.’” (quoting *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003))).

<sup>5</sup> See Fed. R. App. P. 22(b); Ninth Circuit R. 22-1.