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

REGINALD WHITFIELD,

Petitioner,

No. CIV-S-10-0646 KJM CKD P

vs.

GARY SWARTHOUT,

Respondent.

ORDER

_____ /

Petitioner, a state prisoner proceeding pro se, is proceeding with an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner has filed a document titled “motion for summary judgment.” Essentially, petitioner argues that because respondent filed a motion to dismiss, and did not directly address petitioner’s claims, the court should grant petitioner’s application for writ of habeas corpus. However, the court’s July 26, 2010 order indicates that respondent was permitted to respond to petitioner’s application for writ of habeas corpus by way of motion rather than answer. Furthermore, responding to a habeas petition by way of motion is permitted under Rule 4 of the Rules Governing Section 2254 Cases. For these reasons, petitioner’s “motion for summary judgment” will be denied.

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1 In accordance with the above, IT IS HEREBY ORDERED that petitioner's
2 October 19, 2010 motion for "summary judgment" is denied.

3 Dated: November 17, 2011

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5 _____
6 CAROLYN K. DELANEY
7 UNITED STATES MAGISTRATE JUDGE

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