

FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

WARREN WESLEY SUMMERLIN,

Petitioner-Appellant,

v.

TERRY L. STEWART, Director of Arizona
Department of Corrections,

Respondent-Appellee.

No. 98-99002

D.C. No. CV-86-00584-ROS

ORDER

Filed November 4, 2002

Before: KOZINSKI, TROTT, and THOMAS, Circuit Judges

In response to the Motion for Clarification, the Court notes that when a case is heard or reheard *en banc*, the *en banc* panel assumes jurisdiction over the entire case, see 28 U.S.C. § 46(c), regardless of the issue or issues that may have caused any member of the Court to vote to hear the case *en banc*. If the Court votes to hear or rehear a case *en banc*, the *en banc* panel may, in its discretion, choose to limit the issues it considers. See, e.g., Rand v. Rowland, 154 F.3d 952, 954 n.1 (9th Cir. 1998); United States v. Perez, 116 F.3d 840, 843 n.2 (9th Cir. 1997). However, the *en banc* panel is under no obligation to do so. Neither General Order 5.2, nor the procedural posture of this case, alters this rule.

Thus, when the Court requests that the parties brief the question of whether a case should be heard or reheard by an *en banc* panel, it is referring to the entire case.