

FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

WARREN WESLEY SUMMERLIN,

Petitioner - Appellant,

v.

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

Respondent - Appellee.

No. 98-99002

D.C. No. CV-86-00584-ROS
District of Arizona, Phoenix

ORDER

Filed November 22, 2002

Before: SCHROEDER, Chief Judge.

Upon the vote of a majority of nonrecused regular active judges of this court¹, it is ordered that this case be reheard by the en banc court pursuant to Circuit Rule 35-3. The three-judge panel opinion shall not be cited as precedent by or to this court or any district court of the Ninth Circuit, except to the extent adopted by the en banc court.

1. Judge Silverman was recused.