

UNITED STATES COURT OF APPEALS

FILED

FOR THE NINTH CIRCUIT

NOV 21 2017

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JAMES DAVIS BENNETT,

Defendant-Appellant.

No. 17-56737

D.C. Nos. 8:14-cv-01757-AG

8:03-cr-00025-AG-1

Central District of California,
Santa Ana

ORDER

Before: Peter L. Shaw, Appellate Commissioner.

The district court has not issued or declined to issue a certificate of appealability in this appeal, which **appears** to arise under 28 U.S.C. § 2255.

Accordingly, this case is remanded to the district court for the limited purpose of granting or denying a certificate of appealability at the court's earliest convenience. *See* 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b); *United States v. Asrar*, 116 F.3d 1268, 1270 (9th Cir. 1997).

If the district court issues a certificate of appealability, the court should specify which issue or issues meet the required showing. *See* 28 U.S.C. § 2253(c)(3); *Asrar*, 116 F.3d at 1270. Under *Asrar*, if the district court declines to issue a certificate, the court should state its reasons why a certificate of appealability should not be granted, and the Clerk of the district court shall forward to this court the record with the order denying the certificate. *See Asrar*, 116 F.3d

at 1270. A briefing schedule will be established after resolution of the certificate of appealability issue.

The Clerk shall send a copy of this order to the district court.