

FILED

MAY 31 2022

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

FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FRANK JARVIS ATWOOD,

Applicant,

v.

DAVID SHINN, Director,

Respondent.

No. 22-70084

Nos.
District of Arizona
Tucson

ORDER

Before: S.R. THOMAS, Capital Case Coordinator and Circuit Judge.

On May 27, 2022, the three judge panel issued an order denying the application for leave to file a second or successive habeas petition in the district court. Pursuant to 28 U.S.C. § 2244(b)(3)(E), parties are not permitted to file a petition for rehearing or rehearing en banc as to the panel's action. However, rehearing en banc may be granted if a judge sua sponte requests a vote on whether to rehear the panel's order en banc. *See Thompson v. Calderon*, 151 F.3d 918, 922 (9th Cir. 1998) (en banc).

Pursuant to the rules applicable to capital cases when an execution date has been scheduled, a deadline was established for any judge to request a vote on whether the panel's order denying the application should be reheard en banc. No judge requested a vote on whether the order should be reheard en banc within the established time period. Therefore, en banc proceedings with respect to the order are concluded. The panel's order denying the application is the final order of this Court pertaining to the application.