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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff - Appellee,</p> <p>v.</p> <p>CLIFTON ELIAS HOWARD, III,</p> <p>Defendant - Appellant.</p>

No. 08-10307

D.C. No. CR-04-05234-OWW

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Oliver W. Wanger, District Judge, Presiding

Submitted December 15, 2009**

Before: GOODWIN, WALLACE, and FISHER, Circuit Judges.

Clifton Elias Howard, III appeals from the district court's denial of his request for investigatory and expert services under 18 U.S.C. § 3006A(e)(1). We dismiss because the district court's denial without prejudice was not a final,

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

appealable order and the issue is now moot.

At the time of the request at issue, Howard had not filed a timely 28 U.S.C. § 2255 motion raising any claims for relief. The district court denied the request on the ground that it was unable to make a finding that the requested services were necessary, as required by statute. The denial was without prejudice, and a review of the district court's docket in case number CR-04-05234 discloses that Howard has subsequently filed a § 2255 motion collaterally attacking his conviction, along with a new request for expert and investigatory services.

The district court's denial without prejudice of Howard's request under section § 3006A was not a final order conferring appellate jurisdiction upon this court. *See* 28 U.S.C. § 1291. Further, Howard's subsequent request renders this appeal moot.

DISMISSED.