

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

FILED

APR 25 2019

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

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

LEZMOND C. MITCHELL, AKA Lezmond  
Charles Mitchell,

Defendant-Appellant.

No. 18-17031

D.C. Nos. 3:09-cv-08089-DGC  
3:01-cr-01062-DGC-1

District of Arizona,  
Prescott

ORDER

Before: W. FLETCHER and WATFORD, Circuit Judges.

The district court previously determined that at least three of the constitutional claims raised in appellant's underlying 28 U.S.C. § 2255 motion met the substantive certificate of appealability standard. *See* 28 U.S.C. § 2253(c)(2). Accordingly, we grant the request for a certificate of appealability (Docket Entry No. 3) with respect to the following procedural issue: whether the district court properly denied appellant's motion to re-open his case pursuant to Fed. R. Civ. P. 60(b)(6) following the Supreme Court's opinion in *Peña-Rodriguez v. Colorado*, 137 S. Ct 855 (2017). *See* 28 U.S.C. § 2253(c)(3); *Gonzalez v. Thaler*, 565 U.S. 134 (2012); *Slack v. McDaniel*, 529 U.S. 473, 483-85 (2000); *Lambright v. Stewart*, 220 F.3d 1022, 1026 (9th Cir. 2000); *see also* 9th Cir. R. 22-1(e).

The opening brief is due August 28, 2019; the answering brief is due September 27, 2019; the optional reply brief is due within 21 days after service of the answering brief.

This order authorizes production of transcripts at government expense. *See* 28 U.S.C. § 753(f). Appellant shall provide a copy of this order to the reporter(s) along with the designation.

The Clerk shall serve on appellant a copy of the “After Opening a Case - Couseled Cases” document.