

UNITED STATES COURT OF APPEALS April 23, 2008

FOR THE TENTH CIRCUIT Elisabeth A. Shumaker
Clerk of Court

In re:

PHILIP E. STETZEL,

Movant.

No. 08-1041
(D.C. No. 07-CV-2570-BNB)
(D. Colo.)

ORDER

Before **BRISCOE**, **MURPHY**, and **O'BRIEN**, Circuit Judges.

Movant Philip E. Stetzel, a prisoner in state custody, has filed a motion for authorization to file a second or successive habeas corpus petition under 28 U.S.C. § 2244(b). We deny authorization.

In movant's second 28 U.S.C. § 2254 petition he raises the same claims that were denied on the merits in his first § 2254 petition. A court may not entertain such claims. 28 U.S.C. § 2244(b)(1). Contrary to Mr. Stetzel's belief, nothing in the Report and Recommendation of the Magistrate Judge in his first § 2254 proceeding can be taken as authorization from this court to file a second or successive § 2254 petition.

This denial of authorization is not appealable and shall not be the subject of a petition for rehearing or for a writ of certiorari. *See* 28 U.S.C. § 2244(b)(3)(E).

Entered for the Court

A handwritten signature in black ink, reading "Elisabeth A. Shumaker". The signature is written in a cursive style with a long, sweeping underline.

ELISABETH A. SHUMAKER, Clerk