

May 27, 2008

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUITElisabeth A. Shumaker
Clerk of Court

In re:

KEVIN D. LOGGINS,

Movant.No. 08-3123
(D.C. No. 5:99-CV-03102-DES)

ORDER

Before **BRISCOE**, **LUCERO**, and **HOLMES**, Circuit Judges.

Movant Kevin D. Loggins, a Kansas state prisoner appearing pro se, has filed a motion for authorization to file a second or successive 28 U.S.C. § 2254 petition, seeking to challenge his 1996 convictions for aggravated robbery, aggravated kidnaping, aggravated sexual battery, and criminal possession of a firearm. We deny authorization.

Mr. Loggins filed a § 2254 petition challenging his conviction in 1999. That petition was denied, and this court denied him a certificate of appealability. *Loggins v. Hannigan*, 45 F. App'x 846, 850 (10th Cir. 2002). On two prior occasions, Mr. Loggins has sought authorization to file a second or successive § 2254 petition, which were both denied. *Loggins v. Hannigan*, No. 04-3185 (10th Cir. June 24, 2004) (unpublished order); *Loggins v. Hannigan*, No. 03-3279 (10th Cir. Oct. 21, 2003) (unpublished order).

In his current motion, Mr. Loggins seeks to claim that his convictions for aggravated sexual battery and aggravated kidnaping were improperly multiplicitous, citing two Kansas decisions, *State v. Robbins*, 32 P.3d 171 (Kan. 2001) and *State v. Garcia*, 32 P.3d 188 (Kan. 2001). To obtain permission to file a second or successive § 2254 petition, Mr. Loggins must show that he has not raised his claim in a previous habeas petition, 28 U.S.C. § 2244(b)(1), and that his new claim either “relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable,” *id.* § 2244(b)(2)(A), or depends on facts, previously undiscoverable through the exercise of due diligence, that would establish by clear and convincing evidence that he was not guilty of the offense, *id.* § 2244(b)(2)(B).

Mr. Loggins’ proposed claim does not satisfy these criteria. He contends that his claim is based on new law, but the two cases on which he relies are state decisions, and neither announces a new rule of constitutional law declared retroactively applicable by the Supreme Court. *See Tyler v. Cain*, 533 U.S. 656, 663 (2001) (“[A] new rule is not ‘made retroactive to cases on collateral review’ unless the Supreme Court holds it to be retroactive.”).

Accordingly, we DENY Mr. Loggins authorization 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 cursive script, reading "Elisabeth A. Shumaker".

ELISABETH A. SHUMAKER, Clerk