

August 15, 2008

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

In re:

RICKKE L. GREEN,

Movant.

No. 08-6150

ORDER

Before **TACHA, KELLY**, and **TYMKOVICH**, Circuit Judges.

Movant Rickke L. Green, an Oklahoma state prisoner proceeding pro se, has filed a motion for authorization to file a second or successive 28 U.S.C. § 2254 petition, along with two motions to supplement his motion for authorization. He has also filed a motion to disqualify all of the Tenth Circuit judges. His motion and its supplements seek release from imprisonment from his 2005 state court conviction for possession of contraband in a penal institution. We deny authorization and impose sanctions.

Mr. Green has filed, or attempted to file, at least eight § 2254 or habeas petitions relating to his 2005 state conviction for possession of contraband in a penal institution.¹ His current motion seeks release from imprisonment because

¹ *Green v. Whetsel*, No. 05-cv-402 (W.D. Okla. Sept. 14, 2005)

(continued...)

(1) the district court arbitrarily denied or blocked his prior habeas petitions, lacked jurisdiction to adjudicate his prior petitions, and lacked jurisdiction to refer a prior petition to a magistrate judge; and (2) the Tenth Circuit lacked jurisdiction to deny Mr. Green's motion to remand a transferred unauthorized second or successive § 2254 motion, *see In re Green*, No. 08-6025 (10th Cir. Mar. 31, 2008), and failed to rule on an a motion to vacate that order (which does not appear to have been filed in this court). Mr. Green adopts all of the

¹(...continued)

(unpublished) (construed as a 28 U.S.C. § 2241 petition because filed before conviction entered, and dismissed for failure to exhaust), certificate of appealability denied, *Green v. Whetsel*, No. 05-6300 (10th Cir. Jan. 20, 2006) (unpublished); *Green v. Whetsel*, No. 05-cv-461 (W.D. Okla. June 13, 2005) (unpublished) (construed as § 2241 petition because filed before conviction entered, and dismissed), certificate of appealability denied, *Green v. Whetsel*, No. 05-6260 (10th Cir. Feb. 7, 2006) (unpublished); *Green v. Whetsel*, No. 05-cv-1276 (W.D. Okla. Jan. 30, 2006) (unpublished) (§ 2254 petition dismissed without prejudice); *Green v. Whetsel*, No. 05-cv-1290 (W.D. Okla. Feb. 2, 2006) (unpublished) (dismissed without prejudice); *Green v. Whetsel*, No. 05-cv-1370 (W.D. Okla. Jan. 30, 2006) (unpublished) (§ 2254 petition dismissed as facially deficient); *Green v. Whetsel*, No. 05-cv-1420 (W.D. Okla. Apr. 7, 2006) (unpublished) (§ 2254 petition dismissed for failure to exhaust state remedies); *Green v. Whetsel*, No. 06-cv-59 (W.D. Okla. Apr. 12, 2006) (unpublished) (dismissed without prejudice); *Green v. Whetsel*, No. 06-cv-60 (W.D. Okla. Feb. 23, 2006) (unpublished) (§ 2254 petition dismissed as facially invalid); *Green v. Whetsel*, No. 06-cv-61 (W.D. Okla. Apr. 12, 2006) (unpublished) (§ 2254 petition dismissed without prejudice); *Green v. Whetsel*, No. 06-cv-62 (W.D. Okla. Apr. 10, 2006) (unpublished) (§ 2254 petition dismissed without prejudice); *Green v. Whetsel*, No. 06-cv-63 (W.D. Okla. Feb. 23, 2006) (unpublished) (§ 2254 petition dismissed for failure to exhaust state remedies); *Green v. Sirmons*, No. 07-cv-1071 (W.D. Okla. Jan. 29, 2008) (unpublished) (successive § 2254 petition transferred to circuit court), motion to remand denied, *In re Green*, No. 08-6025 (10th Cir. Mar. 31, 2008) (unpublished).

arguments made in the No. 08-6025 motion for remand. He also seeks the disqualification of all the Tenth Circuit judges, and attaches a Motion for Disqualification Forthwith of Entire Tenth Circuit Court, Motion for Intercircuit Transfer, Motion for Redetermination of All Cases, that he filed in two other matters he has pending before this court in Nos. 08-7024 and No. 08-6063.

In his first supplement to his motion for authorization, Mr. Green argues this court should have interpreted his motion for remand in No. 08-6025 as an application to the Supreme Court to exercise its original habeas corpus jurisdiction and transferred it to that Court. Referring to claims and arguments he asserted in prior § 2254 and habeas petitions, Mr. Green also claims he is actually innocent. He also asserts that the denial of all of his prior § 2254 and habeas petitions unconstitutionally denied him federal court relief. He claims this court lacked jurisdiction to rule on his motion for remand in No. 08-6025 because we did not rule on it within thirty days. (The thirty-day advisory time limit for ruling on motions for authorization under 28 U.S.C. § 2244(b)(3)(D) was inapplicable, however, because the motion for remand did not seek authorization). He again seeks disqualification of all the Tenth Circuit judges. In his second supplement, Mr. Green again argues the district court and this court lacked jurisdiction to rule on any of his prior § 2254 and habeas petitions, and repeats his disqualification request. Most recently, Mr. Green filed a motion demanding a ruling on his disqualification request.

To obtain permission to file a second or successive § 2254 petition, Mr. Green 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).

Clearly, Mr. Green’s motion for authorization and the supplemental motions fail to satisfy any of these requirements. Most, if not all, of his claims simply rehash and reargue the same claims and arguments that he raised, and that have been rejected, in his prior § 2254 and other habeas petitions and motions. *See* § 2244(b)(1) (“A claim presented in a second or successive habeas corpus application under section 2254 that was presented in a prior application shall be dismissed.”). None of his claims are based on newly-discovered evidence of actual innocence and none are based on any new, retroactively-applicable constitutional law. Accordingly, authorization to file a second or successive motion pursuant to § 2254 is denied.

Mr. Green is already under filing restrictions as to any civil filings. As noted, he has filed, or attempted to file, at least eight § 2254 petitions relating to his current state court conviction. We previously warned Mr. Green that any

further effort by him to file any collateral attack on his state court conviction without meeting the authorization requirements of § 2244(b) could lead to the imposition of sanctions. His current motion for authorization clearly fails to satisfy any of the authorization requirements.

We therefore impose the following sanctions: The district court is directed not to transfer to this court any future filings by Mr. Green that contain an unauthorized successive § 2254 claim challenging his 2005 state court conviction for possession of contraband in a penal institution; such a claim is defined as “an asserted basis for federal relief from [the] state court’s judgment of conviction,” *see Gonzalez v. Crosby*, 545 U.S. 524, 530 (2005) (defining § 2254 claim). Any further motion filed in this court by Mr. Green for authorization to file a second or successive § 2254 claim or other successive collateral attack on his 2005 Oklahoma conviction will be deemed denied on the thirtieth day unless this court otherwise orders. If, despite this sanction, Mr. Green persists in filing unauthorized second or successive § 2254 petitions, or in filing frivolous motions for authorization to file second or successive § 2254 petitions, we may consider imposing monetary sanctions and other filing restrictions.

Authorization to file a second or successive motion pursuant to § 2254 is DENIED. 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). The motions to file supplements to the motion for authorization

are DENIED as moot. The motions to disqualify all of the Tenth Circuit Court judges filed in this matter, No. 08-6150, are DENIED. Filing sanctions are IMPOSED.

Entered for the Court

A handwritten signature in cursive script, reading "Elisabeth A. Shumaker", followed by a horizontal flourish.

ELISABETH A. SHUMAKER, Clerk