

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

February 22, 2013

Elisabeth A. Shumaker
Clerk of Court

In re:

CHARLES R. SINGLETON,

Movant.

No. 13-3042
(D.C. Nos. 2:07-CR-20167-KHV-8 &
2:11-CV-02406-KHV)
(D. Kan.)

ORDER

Before **TYMKOVICH, HOLMES**, and **MATHESON**, Circuit Judges.

Charles R. Singleton, a pro se federal prisoner, seeks authorization to file a second or successive 28 U.S.C. § 2255 motion. We deny authorization.

In 2009, Mr. Singleton pleaded guilty to conspiracy to manufacture, to possess with intent to distribute, and to distribute fifty grams or more of cocaine base, and to possess with intent to distribute five kilograms or more of cocaine. He was sentenced to 120 months' imprisonment and five years' supervised release. He appealed, but we granted the government's motion to enforce the appeal waiver contained in his plea agreement and dismissed the appeal. *United States v. Singleton*, 357 F. App'x 988, 990 (10th Cir. 2009) (per curiam).

In 2011, he filed a 28 U.S.C. § 2255 motion, arguing that § 2255(f)'s one-year time-bar should not be enforced because he was actually innocent. More particularly, he asserted that his attorney erroneously allowed him to plead guilty to a conspiracy

involving fifty grams or more of cocaine base and five kilograms or more of cocaine even though his presentence investigation report held him accountable for only two-and-a-half kilograms of cocaine. The district court concluded that Mr. Singleton had not presented credible new evidence of actual innocence and overruled the motion as untimely. The court also noted that it need not address his allegation that counsel inadequately explained conspiracy law because this claim did not go to whether Mr. Singleton had satisfied the actual innocence standard. Mr. Singleton sought reconsideration, which the district court denied, and we denied his request for a certificate of appealability, *United States v. Singleton*, 462 F. App'x 857, 858 (10th Cir. 2012). He then filed a motion for writ of audita querela. The district court construed that motion as a second or successive § 2255 motion and overruled the motion for lack of jurisdiction.

Mr. Singleton now seeks authorization from this court to file a second or successive § 2255 motion. In order to be entitled to authorization, he must show that he has new claims that rely on:

(1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found [him] guilty of the offense; or (2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

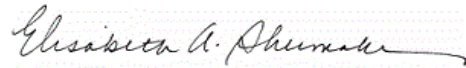
28 U.S.C. § 2255(h).

But Mr. Singleton neither identifies newly discovered evidence nor a new rule of constitutional law in support of his claims. Instead, he essentially takes issue with

the district court's overruling of his first motion for § 2255 relief. He contends he was entitled to equitable tolling of the one-year time bar because he is actually innocent. And, he complains about his attorney's advice to plead guilty, asserting that the evidence was insufficient to establish his involvement in the conspiracy.

Mr. Singleton has failed to meet the standard for authorization in 28 U.S.C. § 2255(h). Accordingly, we deny his motion. This denial of authorization "shall not be appealable and shall not be the subject of a petition for rehearing or for a writ of certiorari." 28 U.S.C. § 2244(b)(3)(E).

Entered for the Court

A handwritten signature in black ink, reading "Elisabeth A. Shumaker", is written over a light blue dotted rectangular background.

ELISABETH A. SHUMAKER, Clerk