

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

January 2, 2014

Elisabeth A. Shumaker
Clerk of Court

In re:

CHRIS A. ANDERSON,

Movant.

No. 13-3335
(D.C. Nos. 2:11-CV-02571-KHV
& 2:10-CR-20001-KHV-1)
(D. Kan.)

ORDER

Before **GORSUCH, HOLMES, and PHILLIPS**, Circuit Judges.

Chris A. Anderson seeks authorization to file a second or successive motion under 28 U.S.C. § 2255 challenging his 2010 convictions and sentences for being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1) and maintaining a residence for manufacture and distribution of cocaine and cocaine base in violation of 21 U.S.C. § 856(a)(1). To obtain authorization, Mr. Anderson must make a prima facie showing that his proposed § 2255 motion relies on either “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 [challenged] offense,” or “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); *id.* § 2244(b)(3)(C). Mr. Anderson has not satisfied either of these conditions.

Mr. Anderson seeks authorization for two claims. First, he wishes to challenge the jurisdiction and venue of the United States District Court for the District of Kansas, where he was convicted. He insists that court lacks authority to prosecute federal crimes committed on non-federal lands in the state. He also contends the Department of Justice cannot prosecute crimes beyond the territorial bounds of the District of Columbia. His arguments in this regard are frivolous, but the material point here is that they are not based on new evidence or a new rule of law. His only effort to justify authorization is to insist that he belatedly discovered the asserted jurisdictional and venue deficiencies, but that does not satisfy the conditions in § 2255(h). Recently conceived legal challenges based on long-known procedural facts are not newly discovered evidence, and his challenges in this regard do not rest on new rules of law.

Second, Mr. Anderson contends that claims previously precluded by precedent have now become available in light of the Supreme Court's recent decision in *Alleyne v. United States*, 133 S. Ct. 2151, 2155 (2013) (holding facts that increase mandatory minimum sentences must be treated as elements of offense). It is not clear how *Alleyne* relates to all of the objections he raises, but the case cannot in any event aid his effort to circumvent the second-or-successive bar. While *Alleyne* did recognize a new rule, this court has noted that its holding has not been made retroactively applicable to cases on collateral review and hence cannot provide a basis for

authorizing a second or successive § 2255 motion. *See In re Payne*, 733 F.3d 1027, 1029-30 (10th Cir. 2013).

Authorization is accordingly denied. 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 cursive script, reading "Elisabeth A. Shumaker", written in black ink on a light blue grid background.

ELISABETH A. SHUMAKER, Clerk