

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

June 20, 2013

FOR THE TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

In re: BRYCE MARTIN AGNEW,

Movant.

No. 13-5075
(D.C. No. 4:12-CV-00067-GKF-PJC)
(N.D. Okla.)

ORDER

Before **HARTZ**, **EBEL**, and **O'BRIEN**, Circuit Judges.

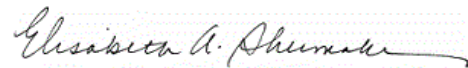
Bryce Martin Agnew, an Oklahoma state prisoner proceeding pro se, seeks authorization to file a second or successive 28 U.S.C. § 2254 habeas petition challenging his 2010 conviction for lewd molestation. We deny authorization.

Agnew's habeas petition cannot proceed in the district court without first being authorized by this court. *See* 28 U.S.C. § 2244(b)(3). We may authorize a claim only if the prisoner has not raised it in a previous § 2254 habeas petition. *See id.* § 2244(b)(1). We may not authorize a new claim unless it satisfies one or both of the requirements specified in § 2244(b)(2). A new claim must rely (1) "on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable," or (2) on facts that "could not have been discovered previously through the exercise of due diligence" and that "would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense." *Id.* § 2244(b)(2)(A)-(B).

Agnew asserts that his trial counsel provided ineffective assistance by giving him “bad advice” in connection with his guilty plea. Citing the Supreme Court’s decision in *Lafler v. Cooper*, 132 S. Ct. 1376 (2012), Agnew contends that this claim relies on a “new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court” under § 2244(b)(2)(A).

Lafler held that the Sixth Amendment right to counsel may be violated when a defendant receives a harsher sentence as a result of his attorney’s constitutionally deficient advice to reject a plea bargain. 132 S. Ct. at 1383, 1390-91. We have held that *Lafler* does not satisfy § 2244(b)(2)(A) because it does not establish a new rule of constitutional law. *In re Graham*, 714 F.3d 1181, 1183 (10th Cir. 2013) (per curiam). Accordingly, the motion for authorization is 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". The signature is written in black ink on a white background.

ELISABETH A. SHUMAKER, Clerk