

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

February 17, 2016

Elisabeth A. Shumaker
Clerk of Court

In re: ANTHONY L. JIMENEZ, SR.,

Movant.

No. 16-1018
(D.C. No. 1:15-CV-01006-LTB)
(D. Colo.)

ORDER

Before **GORSUCH, MATHESON, and MORITZ**, Circuit Judges.

Anthony L. Jimenez, Sr. seeks authorization to file a second or successive petition for writ of habeas corpus under 28 U.S.C. § 2254. *See id.* § 2244(b)(2). Mr. Jimenez, who was convicted of second degree murder and accessory to a crime in Colorado state court, filed his first habeas petition in federal court in 2015. He asserted several claims for relief, including that the state court lacked jurisdiction to try him because his offense took place on land subject to federal jurisdiction (a national forest) and that the trial judge was not qualified to sit because he failed to take or record his oath of office. The district court denied the petition on the grounds that it was untimely and that, with the exception of one claim that did not state a cognizable habeas claim, Mr. Jimenez had failed to exhaust his claims and they would now be procedurally barred. *Jimenez v. Colo. Dep't of Corrs.*, No. 15-cv-01006, 2015 WL 4113771, at *9 (D. Colo. July 8, 2015). Mr. Jimenez did not appeal the denial of relief.

Mr. Jimenez now seeks leave to file a second § 2254 habeas petition to challenge the state court's jurisdiction to try him. His description of the claims he seeks to raise bears a striking resemblance to the claims he raised in his first petition, and he admits they are the same, *see* Mot. for Auth. at 1 (seeking leave to file a successive habeas petition to raise "issues previously presented but not directly decided"). But we may not authorize Mr. Jimenez to file a second or successive habeas petition to raise claims that he presented in a previous habeas petition. *See* 28 U.S.C. § 2244(b)(1). Instead, his proposed claims must rely on either "a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable," or new facts that "could not have been discovered previously through the exercise of due diligence" and that "if proven and viewed in light of the evidence as a whole, 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), (3)(C). Mr. Jimenez does not make the required showing; his proposed claims rely on neither a new rule of constitutional law nor new facts establishing his innocence.

Accordingly, we deny the motion for authorization to file a second or successive § 2254 habeas petition. 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.” *Id.*

§ 2244(b)(3)(E).

Entered for the Court

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

ELISABETH A. SHUMAKER, Clerk