

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

December 12, 2016

Elisabeth A. Shumaker
Clerk of Court

In re: LAURA SHOOP,

Movant.

No. 16-3344
(D.C. Nos. 2:16-CV-02682-KHV & 2:12-
CR-20099-KHV-2)
(D. Kan.)

ORDER

Before **KELLY, MATHESON**, and **McHUGH**, Circuit Judges.

Laura Shoop, a federal prisoner proceeding pro se, seeks authorization to file a second or successive motion under 28 U.S.C. § 2255 to challenge her sentence. *See* 28 U.S.C. §§ 2255(h), 2244(b)(3). We deny authorization.

Shoop pled guilty in 2015 to one count of money laundering and was sentenced to 42 months in prison. She did not appeal, but later filed a motion to vacate under § 2255 raising claims of ineffective assistance of trial counsel and miscarriage of justice. The district court denied the motion and a certificate of appealability. Shoop did not seek further review before this court.

Thereafter, Shoop filed three motions for reduction of sentence under 18 U.S.C. § 3582(c)(2), based on U.S. Sentencing Guidelines Amendments 791, 782, and 794, respectively. The district court denied relief on all three motions. Shoop also sought and was denied authorization from this court to file a second or successive § 2255 motion

raising a claim of ineffective assistance of counsel based on the decision of the D.C. Circuit in *United States v. Abney*, 812 F.3d 1079 (D.C. Cir. 2016).

Most recently, Shoop filed a § 2255 motion in district court, once again seeking to lower her sentence based on Amendment 794, which amended the commentary to § 3B1.2 of the sentencing guidelines concerning the mitigating-role reduction, U.S. Sentencing Guidelines Manual supp. app. C, Amend. 794 (U.S. Sentencing Comm’n 2015). Responding to the district court’s earlier denial of her § 3582(c)(2) motion on the ground that the Sentencing Commission had not made Amendment 794 retroactive, Shoop cited a Ninth Circuit case holding that the amendment could be applied retroactively to cases on appeal because it was merely a clarification. The district court dismissed the § 2255 motion for lack of jurisdiction as an unauthorized second or successive motion.

Shoop now seeks authorization from this court to file a second or successive § 2255 motion based on Amendment 794. We may not authorize a second or successive § 2255 motion unless Shoop makes a prima facie showing that her claim relies 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 [her] 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); *see also id.* § 2244(b)(3)(C). Although Shoop contends that her proposed § 2255 motion relies on both a new rule of

constitutional law and newly discovered evidence, Amendment 794 is neither. Thus, Shoop has not made the necessary showing for authorization under § 2255(h).

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", followed by a horizontal flourish line.

ELISABETH A. SHUMAKER, Clerk