

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: JESUS RIOS-ZAMORA,

Petitioner.

No. 16-3352  
(D.C. Nos. 2:14-CV-02176-CM &  
2:12-CR-20085-CM-1)  
(D. Kan.)

ORDER

Before **LUCERO, MATHESON**, and **PHILLIPS**, Circuit Judges.

Jesus Rios-Zamora, a federal prisoner proceeding pro se, seeks authorization to file a second or successive 28 U.S.C. § 2255 motion. We deny authorization.

To obtain authorization, a movant must make a prima facie showing that his claim meets the gatekeeping requirements of 28 U.S.C. § 2255(h). 28 U.S.C. §§ 2255(h), 2244(b)(3)(C); *see also Case v. Hatch*, 731 F.3d 1015, 1028-29 (10th Cir. 2013). A claim may be authorized under § 2255(h)(2) if it relies on “a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.” Mr. Rios-Zamora relies on *Johnson v. United States*, 135 S. Ct. 2551 (2015), and *Mathis v. United States*, 136 S. Ct. 2243 (2016).

Mr. Rios-Zamora pleaded guilty to illegally re-entering the United States after deportation following conviction of an aggravated felony. One factor in his 70-month sentence was a 16-level increase under U.S. Sentencing Guideline Manual § 2L1.2(b)(1)(A)(ii) (U.S. Sentencing Comm’n 2012) for having been deported after a

conviction for a crime of violence. Recently we denied Mr. Rios-Zamora authorization to file a second or successive § 2255 motion under *Johnson*, explaining that *Johnson* did not undermine § 2L1.2(b)(1)(A)(ii) because § 2L1.2's definition of "crime of violence" did not include the clause that *Johnson* held to be unconstitutionally vague. See *In re Rios-Zamora*, No. 16-3185, slip op. at 2-3 (10th Cir. Sept. 27, 2016) (unpublished). We will not revisit that denial of authorization.

*Mathis* likewise offers no relief to Mr. Rios-Zamora, because it does not meet the requirements of § 2255(h)(2). *Mathis* addresses an issue of statutory construction, not a rule of constitutional law. See *Dawkins v. United States*, 829 F.3d 549, 551 (7th Cir. 2016) (per curiam). It also does not establish a "new" rule, being grounded squarely in the Supreme Court's earlier precedent. See *Mathis*, 136 S. Ct. at 2257 (discussing the Court's adherence, for more than 25 years, to the principles applied in *Mathis*).

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). Mr. Rios-Zamora is warned that he may be subject to sanctions if he files another motion for authorization challenging this conviction or sentence with arguments that are substantially similar to those presented here.

Entered for the Court

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

ELISABETH A. SHUMAKER, Clerk