

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

July 12, 2016

Elisabeth A. Shumaker
Clerk of Court

In re: SAMUEL RODRIGUEZ,

Movant.

No. 16-6186
(D.C. Nos. 5:12-CR-00012-R-1 & 5:14-
CV-00407-R)
(W.D. Okla.)

ORDER

Before **BRISCOE**, **GORSUCH**, and **BACHARACH**, Circuit Judges.

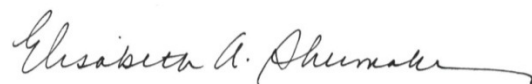
Movant Samuel Rodriguez, a federal prisoner proceeding pro se, seeks an order authorizing him to file a second or successive 28 U.S.C. § 2255 motion in the district court so he may assert a claim for relief based on *Johnson v. United States*, 135 S. Ct. 2551 (2015). See 28 U.S.C. §§ 2255(h), 2244(b)(3). Because Movant has made a prima facie showing that he satisfies the relevant conditions for authorization under § 2255(h)(2), we grant authorization.

Movant received a sentence enhanced under the guideline for career offenders, which is triggered by the defendant having “two prior qualifying felony convictions of either a crime of violence or a controlled substance offense,” U.S.S.G. § 4B1.1(a). He alleges that at least one of his prior convictions qualified for this purpose by virtue of the residual clause in the guideline’s definition of a crime of violence, which encompasses crimes that “involve[] conduct that presents a serious potential risk of physical injury to another,” *id.* § 4B1.2(a)(2). An identical clause in the Armed Career Criminal Act was invalidated in *Johnson* on the ground that it was unconstitutionally vague.

To obtain authorization, Movant must make a prima facie showing that his claim meets the gatekeeping requirements of § 2255(h). 28 U.S.C. § 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.” *Johnson* announced a new rule of constitutional law that was made retroactive to cases on collateral review in *Welch v. United States*, 136 S. Ct. 1257, 1265 (2016). We held in *In re Encinias*, No. 16–8038, 2016 WL 1719323, at *2 (10th Cir. Apr. 29, 2016) (per curiam), that second or successive § 2255 motions that rely on *Johnson* to challenge the career–offender guideline qualify for authorization under § 2255(h)(2).

The motion for authorization filed in this court on June 27, 2016, is granted. Pursuant to 28 U.S.C. §1631, we direct the Clerk to transfer the now-authorized successive § 2255 motion to the district court for the Western District of Oklahoma. The filing date for the authorized § 2255 motion is the earlier of 1) the date the motion for authorization was filed in this court, or 2) the date the motion for authorization was delivered to prison authorities for mailing, if the district court determines Movant is entitled to the benefit of the prison mailbox rule, *see Price v. Philpot*, 420 F.3d 1158, 1165-66 (10th Cir. 2005); Fed. R. App. P. 25(a)(2)(C).

Entered for the Court

A handwritten signature in cursive script, reading "Elisabeth A. Shumaker".

ELISABETH A. SHUMAKER, Clerk