

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

December 8, 2016

Elisabeth A. Shumaker
Clerk of Court

In re: DEAN LEROY FREERKSEN, III,

Movant.

No. 16-6331
(D.C. No. 5:10-CR-00188-R-1 &
5:13-CV-00569-R)
(W.D. Okla.)

ORDER

Before **BRISCOE**, **HOLMES**, and **MATHESON**, Circuit Judges.

Dean Leroy Freerksen, III, a federal prisoner proceeding pro se, seeks authorization under 28 U.S.C. § 2255(h) to file a second or successive § 2255 motion in district court. We deny his motion because he fails to meet the statutory requirements for authorization.

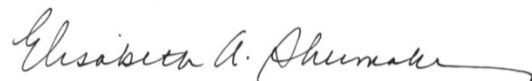
Following a jury trial in 2010, Freerksen was convicted of five counts of production of child pornography and was sentenced to fifty years in prison. We affirmed his conviction and sentence on appeal, *see United States v. Freerksen*, 457 F. App'x 769 (10th Cir. 2012), and later denied him a certificate of appealability to appeal the district court's denial of his first § 2255 motion, *see United States v. Freerksen*, 570 F. App'x 747 (10th Cir. 2014). Freerksen now seeks leave to file a second § 2255 motion to raise a Fourth Amendment claim that the search of his electronic equipment was illegal. He contends that the search warrant was invalid because Detective Morton, who obtained the search warrant, lied to the magistrate judge who issued the warrant.

We may not authorize a second or successive § 2255 motion unless Freerksen makes a prima facie showing that the 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 [him] 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 he indicates in the body of his motion that his claim does not rely on either a new rule of constitutional law or newly discovered evidence, Freerksen states in his attached declaration that he has newly discovered evidence in support of his claim, namely that Detective Morton “was made to retire for theft and lying to his superior officers on multiple occasions,” Decl. of Dean Leroy Freerksen, III at 2.

Freerksen has raised similar challenges to the truthfulness of Detective Morton’s representations previously: in a pretrial motion to suppress, on direct appeal, and in his first § 2255 motion. Freerksen therefore fails to satisfy the requirements of § 2255(h)(1); he makes no attempt to satisfy the requirements of § 2255(h)(2).

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".

ELISABETH A. SHUMAKER, Clerk