

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

September 14, 2017

Elisabeth A. Shumaker
Clerk of Court

In re: TONY LORENZO McKNIGHT,

Movant.

No. 17-6193
(D.C. No. 5:13-CV-00527-HE)
(W.D. Okla.)

ORDER

Before **BRISCOE**, **EBEL**, and **O'BRIEN**, Circuit Judges.

Tony Lorenzo McKnight, an Oklahoma prisoner proceeding pro se, moves for authorization to file a second or successive 28 U.S.C. § 2254 petition. We deny authorization.

McKnight was convicted by a jury of robbery with a dangerous weapon. He was sentenced to thirteen years' imprisonment. His § 2254 petition, filed in 2013, was unsuccessful.

To obtain authorization to file a second or successive § 2254 petition, McKnight must show that his claims rely on (1) “a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable,” or (2) 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.” 28 U.S.C. § 2244(b)(2). McKnight does not meet this test.

According to McKnight, his due process rights were violated when the state failed to perform DNA testing on a ski cap, and he is entitled to have DNA testing on all the evidence admitted at trial under an Oklahoma statute that was enacted after his conviction. These claims, however, do not rely on a new rule of constitutional law, or new facts that prove his innocence.

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