

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

October 16, 2018

Elisabeth A. Shumaker
Clerk of Court

In re: PHILIP ANDRA GRIGSBY,

Movant.

No. 18-3211
(D.C. No. 6:12-CR-10174-JTM-1)
(D. Kan.)

ORDER

Before **HOLMES**, **PHILLIPS**, and **MORITZ**, Circuit Judges.

Philip Andra Grigsby, a federal prisoner proceeding pro se, seeks authorization to file a second or successive 28 U.S.C. § 2255 motion. We deny authorization.

Mr. Grigsby pleaded guilty to eight counts of sexual exploitation of a minor in violation of 18 U.S.C. § 2252(a)(4)(B), and one count of being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1). He was sentenced to 260 years' imprisonment. This court affirmed his direct appeal. Mr. Grigsby's first § 2255 motion was denied, and this court subsequently denied two previous requests for authorization. In this, Mr. Grigsby's third motion for authorization, he seeks authorization to bring a successive § 2255 claim based on alleged flaws in the indictment.

One means for Mr. Grigsby to obtain authorization is to demonstrate that his proposed § 2255 motion relies on "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.” § 2255(h). The claim Mr. Grigsby wants to raise in his § 2255 motion is whether his conviction is “void for lack of subject matter jurisdiction due to insufficient indictment.” Mot. for Auth. at 8. The problem for Mr. Grigsby is that the proposed claim is not based on new evidence—it is merely a new argument.

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