

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

May 17, 2018

Elisabeth A. Shumaker
Clerk of Court

In re: COURTNEY C. CRENSHAW,
Movant.

No. 18-5037
(D.C. No. 4:02-CV-00919-JHO-PJC)
(N.D. Okla.)

ORDER

Before **HOLMES**, **O'BRIEN**, and **BACHARACH**, Circuit Judges.

Oklahoma prisoner Courtney C. Crenshaw seeks authorization to file a second or successive 28 U.S.C. § 2254 habeas application. We deny authorization.

Mr. Crenshaw was convicted in 2000 of first degree murder. He was sixteen years old when he shot and killed his victim, and seventeen years old at the time of his trial. The state court sentenced him to life imprisonment with the possibility of parole. In 2007, the district court denied his first § 2254 application. He did not appeal the denial. He subsequently filed an unsuccessful proceeding for post-conviction relief in the Oklahoma courts.

Mr. Crenshaw now wishes to bring the following habeas claim: “The Petitioner’s sentence for a homicide offense committed while a juvenile is in violation of the United States Constitution’s Eighth Amendment and the Oklahoma Court of Criminal Appeals decision is an unreasonable determination of the governing Supreme Court precedents.” Mot. for Authorization at 5 (capitalization omitted). For authorization, he relies on

28 U.S.C. § 2244(b)(2)(A), which requires him to “show[] that the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.” He cites *Virginia v. LeBlanc*, 137 S. Ct. 1726 (2017) (per curiam), *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016), *Miller v. Alabama*, 567 U.S. 460 (2012), and *Graham v. Florida*, 560 U.S. 48 (2010).

Graham, *Miller*, and *Montgomery* addressed the constitutionality of life sentences without the possibility of parole for juvenile offenders. *LeBlanc* held that the Virginia state courts did not unreasonably apply *Graham* in determining that a geriatric release program that replaced traditional parole did not violate a juvenile non-homicide offender’s Eighth Amendment rights. *See LeBlanc*, 137 S. Ct. at 1729.

Mr. Crenshaw does not fit within the categories established in these cases. He was convicted of a homicide offense and received a life sentence *with* the possibility of parole. His claim, as we understand it, is that even where a homicide sentence facially includes the possibility of parole, a state’s parole procedures must provide a juvenile offender with a statistically meaningful, procedurally appropriate opportunity to obtain release. He argues that he should benefit from this purported new rule of constitutional law because (1) the procedures provided by Oklahoma’s parole process are inadequate, (2) only a small percentage of Oklahoma violent offenders are ever actually recommended for parole, and (3) Oklahoma should be required to either create a liberty interest in parole or mandate release of juvenile offenders who demonstrate rehabilitation and maturity. *See Mot.* at 10, 14-17.

The Supreme Court cases Mr. Crenshaw cites do not establish the broad, new rule on which he relies for authorization. Mr. Crenshaw has failed to establish that his claim “relies on 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. § 2244(b)(2)(A). We therefore deny authorization. Mr. Crenshaw’s motion to file a reply to the response to his motion is granted.

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.

ELISABETH A. SHUMAKER, Clerk