

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

July 2, 2018

Elisabeth A. Shumaker
Clerk of Court

In re: UNRICO RANIER MINNERS,

Movant.

No. 18-5065
(D.C. Nos. 4:08-CV-00317-JHP-SAJ &
4:05-CR-00152-2)
(N.D. Okla.)

ORDER

Before **LUCERO, KELLY**, and **MORITZ**, Circuit Judges.

Unrico Ranier Minners seeks authorization to file a second or successive 28 U.S.C. § 2255 motion. For the following reasons, we deny authorization.

In 2005, Mr. Minners pleaded guilty to a four-count indictment that included charges of conspiracy, interstate stalking, using a firearm during and in relation to a crime of violence, and being a felon in possession of a firearm. He was sentenced to 235 months in prison, which reflected an enhancement under the guideline for career offenders. Mr. Minners appealed, and his counsel filed an *Anders* brief. After concluding there were no non-frivolous issues on appeal, we dismissed the appeal. *United States v. Minners*, 211 F. App'x 742, 745 (10th Cir. 2007).

In 2008, Mr. Minners filed his first 28 U.S.C. § 2255 motion. The district court dismissed the motion as time-barred and we denied Mr. Minner's request for a certificate of appealability.

In 2016, he filed a motion for authorization to file a second or successive § 2255 motion, arguing he was entitled to relief from his sentence based on the Supreme Court's decision in *Johnson v. United States*, 135 S. Ct. 2551 (2015). In *Johnson*, the Supreme Court held that "imposing an increased sentence under the residual clause of the Armed Career Criminal Act [(ACCA)] violates the Constitution's guarantee of due process." 135 S. Ct. at 2563. Although Mr. Minners was not sentenced under the ACCA, the career-offender guideline contained an identically worded residual clause in its definition of "crime of violence." See *In re Encinias*, 821 F.3d 1224, 1225 (10th Cir. 2016) (per curiam). He argued that at least one of his prior convictions qualified as a crime of violence by virtue of the residual clause and that after *Johnson*, the residual clause in the career-offender guideline was also unconstitutionally vague. At the time, we had concluded that "given the similarity of the clauses addressed . . . and the commonality of the constitutional concerns involved," a "challenge to [a] career-offender sentence is sufficiently based on *Johnson* to permit authorization under § 2255(h)(2)." *Encinias*, 821 F.3d at 1226. We therefore granted authorization and transferred Mr. Minners' successive § 2255 motion to the district court for filing.

The district court appointed counsel for Mr. Minners. Although not reflected on the district court docket sheet, Mr. Minners asserts that his counsel requested the district court hold his § 2255 motion in abeyance until the Supreme Court ruled in *Beckles v. United States*. *Beckles* involved a *Johnson* challenge to the residual clause in the career-offender guideline, but the Supreme Court ultimately rejected the argument that the guidelines' residual clause was also void for vagueness. *Beckles v. United States*,

137 S. Ct. 886, 890 (2017). The Court held that the advisory guidelines were not subject to vagueness challenges under the Due Process Clause. *Id.*¹

Mr. Minners has now filed another motion for authorization to file a second or successive § 2255. To obtain authorization, he must show that his proposed successive § 2255 claim is based 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. § 2255(h)(2). He seeks to bring the same challenge to his career-offender-guideline enhanced sentence that he brought in his previous motion for authorization. But he now argues he is entitled to relief based on the Supreme Court’s recent decision in *Sessions v. Dimaya*, 138 S. Ct. 1204 (2018).

In *Dimaya*, the Supreme Court decided that a residual clause in the definition of “crime of violence” in 18 U.S.C. § 16 suffered from the same constitutional defect as the residual clause in the ACCA. *See* 138 S. Ct. at 1210-1211, 1213. We need not resolve in this matter whether *Dimaya* announced a new rule of constitutional law because Mr. Minners’ claim is not based on *Dimaya*.

As noted above, Mr. Minners is seeking to challenge his enhancement under the career-offender guideline, but his claim is foreclosed by the Supreme Court’s decision in *Beckles*. *Dimaya* did not involve a guideline provision—it involved a definitional statute that was used to determine whether a crime was an aggravated felony for purposes of a

¹ Although *Beckles* was decided in March 2017, the docket sheet does not show that the district court has ruled on the pending § 2255 motion. *See United States v. Minners*, 05-CR-00152-JHP-2 (N.D. Okla).

provision of the Immigration and Nationality Act. See 138 S. Ct. at 1210-1211. And there is nothing in *Dimaya* that casts doubt on *Beckles*. Mr. Minners cannot demonstrate the requisite connection between his claim and the *Dimaya* decision—a claim challenging a sentence that was enhanced under the career-offender guideline is not based on *Dimaya*. Mr. Minners has therefore failed to show he satisfies the requirements for authorization in § 2255(h)(2).

Accordingly, we deny authorization. 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