

FILED

**United States Court of Appeals
Tenth Circuit**

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

November 29, 2019

**Elisabeth A. Shumaker
Clerk of Court**

In re: EARL HINES,

Movant.

No. 19-1430
(D.C. No. 1:03-CV-00087-ZLW)
(D. Colo.)

ORDER

Before **LUCERO, HOLMES**, and **McHUGH**, Circuit Judges.

Earl Hines, proceeding pro se, moves for authorization to file a second or successive 28 U.S.C. § 2254 habeas application challenging his 1995 convictions in Colorado state court on two counts of first-degree murder. We deny authorization.

Mr. Hines filed his first § 2254 application in 2003. Before the application was served on the state respondent, the district court ordered Mr. Hines to show cause why it should not be dismissed as barred by the one-year limitations period in 28 U.S.C. § 2244(d). After receiving Mr. Hines' response, the district court dismissed the application as time-barred. We denied Mr. Hines' request for a certificate of appealability to appeal the dismissal.

In 2009, Mr. Hines filed a Federal Rule of Civil Procedure Rule 60(b) motion asking the district court to reconsider and vacate its decision dismissing his § 2254 application as time-barred. The district court dismissed the Rule 60 motion in part and denied it in part. The court dismissed it insofar as it was an unauthorized second

or successive § 2254 application and denied it insofar as it sought reconsideration of the court's procedural ruling that the original § 2254 application was untimely.

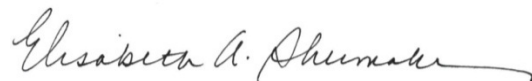
Mr. Hines did not attempt to appeal.

Mr. Hines now seeks authorization under 28 U.S.C. § 2244(b)(2)(A) to file a second or successive § 2254 application based on the Supreme Court's decision in *Wood v. Milyard*, 566 U.S. 463 (2012). In *Wood*, the Supreme Court held that a federal court may raise § 2244(d)'s one-year limitations period sua sponte provided it affords the habeas applicant an opportunity to respond, but a court may not consider timeliness if it has been affirmatively waived by the respondent. 566 U.S. at 471-73 & n.5.

This court may authorize a second or successive application under § 2244(b)(2)(A) only if "the applicant shows 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." Mr. Hines has not made this showing. He has not shown that *Wood* announced a new rule of constitutional law or that it has been made retroactive to cases on collateral review by the Supreme Court.

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