

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

December 17, 2019

Elisabeth A. Shumaker
Clerk of Court

In re: JAMES RICCARDI,

Movant.

No. 19-3260
(D.C. Nos. 2:02-CR-20060-JWL-1 &
5:06-CV-03278-JWL)
(D. Kan.)

ORDER

Before **TYMKOVICH**, Chief Judge, **LUCERO** and **MORITZ**, Circuit Judges.

James Riccardi, a federal prisoner proceeding pro se, seeks authorization to file a second or successive 28 U.S.C. § 2255 motion. For the following reasons, we deny the motion.

In January 2003, Mr. Riccardi was convicted after a jury trial of two counts of possession of child pornography and two counts of using an instrumentality of interstate commerce to entice a minor to engage in a prohibited sex act. He was sentenced to 262 months' imprisonment. We affirmed his convictions and sentence. He filed his first § 2255 motion in 2006. The district court denied the motion and we affirmed the district court's denial. Since that time, Mr. Riccardi has twice sought authorization to file a second or successive § 2255 motion. We denied both requests.

Mr. Riccardi now asserts that he is entitled to authorization to bring a claim that his Sixth Amendment rights were violated while he was housed at the Leavenworth, Kansas federal detention center during his trial and sentencing in 2003. This assertion is

based on recent findings in an unrelated criminal case in the District of Kansas that the U.S. Attorney's office in Kansas obtained unauthorized audio and video recordings of some inmate attorney/client phone calls and visits while those inmates were housed at that detention center.

To be entitled to authorization, Mr. Riccardi must show that his claim 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.” 28 U.S.C. § 2255(h)(1). First, we note that Mr. Riccardi has failed to offer any evidence that his visits or phone calls with his attorneys were recorded. In a filing attached to his motion for authorization, he concedes that his name was not on the list recently submitted in the unrelated criminal case that identified persons who may be impacted by the unauthorized recordings. And he also states that a federal public defender wrote him a letter indicating that there was no evidence of any video recordings with his attorney. But more importantly, Mr. Riccardi has failed to identify how any newly discovered evidence related to potential video or audio recordings of conversations with his attorneys would establish that no jury would have found him guilty of the offenses for which he was convicted. Mr. Riccardi has therefore failed to meet the standard for authorization in § 2255(h)(1).

For the foregoing reasons, 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 long horizontal flourish.

ELISABETH A. SHUMAKER, Clerk