

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

January 24, 2020

Christopher M. Wolpert
Clerk of Court

In re: SILVIO McKENZIE-GAINZA,

Movant.

No. 20-4007
(D.C. No. 2:17-CR-00335-TS-DBP-2)
(D. Utah)

ORDER

Before **HOLMES, KELLY**, and **BACHARACH**, Circuit Judges.

Silvio McKenzie-Gainza, proceeding pro se, has filed a request for authorization to file a second or successive motion under 28 U.S.C. § 2255 to challenge his conviction for conspiracy to distribute methamphetamine in violation of 21 U.S.C. §§ 841 and 846. On the form he submitted to the court, however, Mr. McKenzie-Gainza responded “no” to the following question, “have you ever filed a motion to vacate in any federal court?” Mot. for Auth. at 3. Consistent with Mr. McKenzie-Gainza’s response, we found no record that he has filed a first § 2255 motion. Accordingly, he does not need authorization to file a second or successive § 2255 motion.

We thus deny as unnecessary Mr. McKenzie-Gainza’s request for 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



CHRISTOPHER M. WOLPERT, Clerk