

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

August 30, 2021

Christopher M. Wolpert
Clerk of Court

In re: ANTHONY DAVID TEAGUE,

Movant.

No. 21-2097
(D.C. Nos. 2:03-CR-01133-RB-GBW-1 &
2:07-CV-00326-RB-LCS)
(D. N.M.)

ORDER

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

Anthony David Teague, appearing pro se, has filed a motion seeking authorization to file a second or successive motion under 28 U.S.C. § 2255. We dismiss the motion.

In 2003, Mr. Teague was convicted of one count of threat to injure a person through interstate commerce in violation of 18 U.S.C. § 875(c). He was sentenced to 21 months' imprisonment. We affirmed his conviction and sentence on direct appeal. *United States v. Teague*, 443 F.3d 1310 (10th Cir. 2006).

Mr. Teague filed a § 2255 motion in 2007, which the district court denied. Eleven years later, he sought relief from that order in the district court. The district court construed the motion as an unauthorized new § 2255 motion and dismissed it for lack of jurisdiction. Additionally, Mr. Teague has filed at least four other § 2255 motions challenging his conviction.

Mr. Teague has now filed a motion for authorization to file yet another § 2255 motion. To be entitled to authorization, Mr. Teague must show his proposed § 2255

“contain[s]” either “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 the movant guilty of the offense,” or “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)(1)–(2).

Mr. Teague’s motion, however, specifically disclaims either of these showings.

Instead, he invites us to conclude that his proposed new motion—which he has already filed in the district court and is still pending—is a “true” Rule 60(b) motion not subject to the pre-authorization requirements of §§ 2244(b)(3) and 2255(h). But under the procedures we established in *Spitznas v. Boone*, 464 F.3d 1213 (10th Cir. 2006), “[t]he district court should first determine . . . whether the motion is a true Rule 60(b) motion or a second or successive petition.” *Id.* at 1216. “If the district court concludes that the motion is a true Rule 60(b) motion, it should rule on it as it would any other Rule 60(b) motion.” *Id.* at 1217. In the event the district court denies the motion, Mr. Teague then will need to obtain a certificate of appealability in order to appeal. *Id.* at 1217-18. We reject Mr. Teague’s attempt to circumvent these procedures. The district court will rule on his motion in due course.

Mr. Teague’s motion for authorization is dismissed.

Entered for the Court

A handwritten signature in black ink, appearing to read 'CWolpert', with a long horizontal stroke extending to the right.

CHRISTOPHER M. WOLPERT, Clerk