

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

August 15, 2022

Christopher M. Wolpert
Clerk of Court

In re: REYNALDO Y. VILLA,

Movant.

No. 22-1227
(D.C. No. 1:14-CV-03502-LTB)
(D. Colo.)

ORDER

Before **TYMKOVICH**, Chief Judge, **BACHARACH** and **McHUGH**, Circuit Judges.

Reynaldo Y. Villa, a state prisoner proceeding pro se, seeks authorization to file a second or successive 28 U.S.C. § 2254 habeas application. We deny authorization.

Mr. Villa seeks to bring a new claim that he did not receive a fair trial as guaranteed by the Due Process Clause of the United States Constitution. To be entitled to authorization, Mr. Villa must show that his claim:

(A) . . . relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(B)(i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and

(ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found [him] guilty of the underlying offense.

28 U.S.C. § 2244(b)(2). Although he contends his claim relies on newly discovered evidence and a new rule of constitutional law, he has not identified any newly discovered evidence that could not have been discovered previously through the exercise of due

diligence nor has he identified a new rule of constitutional law that was previously unavailable that the Supreme Court has made retroactive to cases on collateral review.

He asserts that he was convicted of sexual assault on a child even though the Denver Crimes Lab “found No DNA of [his] accuser on [his] hands and none of [his] DNA on her!” Mot. for Auth. at 8. But he does not explain how this evidence could not have been discovered prior to his first habeas application. He also cites *Rojas v. People*, 490 P.3d 744 (Colo. App. 2020), *rev’d*, 504 P.3d 296 (Colo. 2022), for his new rule of constitutional law. But Mr. Villa does not identify what new rule of constitutional law that case announced, and the Supreme Court has not made that state-court decision retroactive to cases on collateral review.

Because Mr. Villa has not met the standards for authorization in § 2244(b)(2), 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.” § 2244(b)(3)(E).

Entered for the Court

A handwritten signature in dark ink, appearing to read 'Christopher M. Wolpert', with a long horizontal stroke extending to the right.

CHRISTOPHER M. WOLPERT, Clerk