

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

FILED
United States Court of Appeals
Tenth Circuit

September 15, 2022

In re: JAMES JUSTIN WOODS,

Movant.

Christopher M. Wolpert
Clerk of Court

No. 22-3159
(D.C. Nos. 5:16-CV-04053-JWL &
5:11-CR-40046-JWL-1)
(D. Kan.)

ORDER

Before **HARTZ**, **MORITZ**, and **CARSON**, Circuit Judges.

James Justin Woods seeks authorization to file a second or successive motion under 28 U.S.C. § 2255. We deny authorization.

In 2012, a jury convicted Mr. Woods of conspiring to distribute methamphetamine and distributing methamphetamine, and the district court sentenced him to 30 years in prison. We affirmed the judgment on direct appeal. *United States v. Woods*, 764 F.3d 1242 (10th Cir. 2014), *cert. denied*, 575 U.S. 972 (2015). Mr. Woods later filed a 28 U.S.C. § 2255 motion, which the district court denied. Mr. Woods appealed, but his appeal was dismissed for lack of prosecution.

A second or successive § 2255 motion cannot proceed in the district court without first being authorized by this court. *See* 28 U.S.C. § 2255(h); *id.* § 2244(b)(3). We may authorize a claim only if the prisoner makes a prima facie showing, *see* § 2244(b)(3)(C), that the motion contains (1) “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”; or (2) “a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable,” § 2255(h).

Mr. Woods’s motion for authorization relies on newly discovered evidence that, while he was detained at the Leavenworth Detention Center, his telephone conversations with his attorney and other privileged attorney-client communications appear to have been recorded and provided to the prosecution. But he fails to make a prima facie showing that this evidence, “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.*” § 2255(h)(2) (emphasis added). Indeed, his motion for authorization does not contain any argument on this requirement. Absent such a prima facie showing, we cannot authorize a second or successive motion under § 2255 based on newly discovered evidence.

We therefore deny the motion 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.” § 2244(b)(3)(E).

Entered for the Court

A handwritten signature in black ink, appearing to read 'Christopher M. Wolpert', written over a horizontal line.

CHRISTOPHER M. WOLPERT, Clerk