

FILED

**United States Court of Appeals
Tenth Circuit**

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

December 6, 2022

**Christopher M. Wolpert
Clerk of Court**

In re: JOSHUA MOONEY,

Movant.

No. 22-5102
(D.C. No. 4:22-CV-00415-TCK-CDL)
(N.D. Okla.)

ORDER

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

Joshua Mooney, an Oklahoma prisoner proceeding pro se, seeks authorization to file a second or successive 28 U.S.C. § 2254 habeas application. We deny authorization.

In 2014, Mr. Mooney pleaded guilty to first degree murder, burglary, and robbery. He was fourteen years old at the time of the crimes. He was sentenced to life with the possibility of parole for the murder and robbery convictions and to seven years for the burglary conviction, with all sentences to be served concurrently. He did not file a direct appeal.

In 2015, he filed a § 2254 habeas application. The district court denied the motion. Mr. Mooney did not appeal from the denial.

In September of this year, Mr. Mooney filed another § 2254 habeas application. The district court dismissed it for lack of jurisdiction because he had not obtained authorization from this court to file a second or successive habeas application. He now seeks authorization to do so.

Mr. Mooney seeks to raise two new claims: (1) that his counsel was ineffective in advising him to plead guilty to a life sentence as a fourteen-year-old; and (2) that his life sentence constitutes cruel and unusual punishment under the Eighth Amendment. To obtain authorization to file a second or successive § 2254 habeas application, Mr. Mooney must make a prima facie showing that he can meet the requirements in 28 U.S.C. § 2244(b)(2). *See* § 2244(b)(3)(C). To do so, he must show either “(A) . . . the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable,” § 2244(b)(2)(A), 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,” § 2244(b)(2)(B).

Mr. Mooney does not identify any newly discovered evidence; he cites only to two cases to support his new claims. One of those cases, *Miller v. Alabama*, 567 U.S. 460 (2012), was issued in 2012 and was available to Mr. Mooney before he filed his first § 2254 habeas application in 2015, so it cannot meet the requirement in § 2244(b)(2)(A) of being “previously unavailable.” Further, *Miller v. Alabama* would not provide support for Mr. Mooney’s Eighth Amendment argument as it applies only to a sentencing scheme that mandates life in prison without the possibility of parole for juvenile homicide offenders. The other case, *Knapper v. State*, 473 P.3d 1053 (Okla. 2020), was issued after his first habeas application, but Mr. Mooney has failed to show that *Knapper*

announced a new rule of constitutional law or that the Supreme Court has made that state-court case retroactive to cases on collateral review, as § 2244(b)(2)(A) requires.

Because Mr. Mooney has not made a prima facie showing he can meet the authorization requirements in § 2244(b)(2), we deny his motion. 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 'C. M. Wolpert', with a long horizontal stroke extending to the right.

CHRISTOPHER M. WOLPERT, Clerk