

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

May 27, 2022

Christopher M. Wolpert
Clerk of Court

In re: JOSEPH MACASTLE JACKSON,

Petitioner.

No. 22-6082
(D.C. No. 5:22-CV-00083-C)
(W.D. Okla.)

ORDER

Before **HOLMES**, **MORITZ**, and **EID**, Circuit Judges.

Joseph M. Jackson is an Oklahoma prisoner serving a life sentence for a murder committed in 1983. *See Jackson v. State*, 741 P.2d 875, 875–76 (Okla. Crim. App. 1987). He has filed multiple 28 U.S.C. § 2254 petitions challenging his conviction, and he now moves *pro se* for authorization to file another.

This court may not authorize a second or successive § 2254 petition unless the movant relies on (i) “a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court,” or (ii) evidence that reasonably could not have been discovered sooner and that clearly and convincingly shows he would not have been convicted. *See* 28 U.S.C. § 2244(b)(2).

Jackson asserts he is Native American and his crime occurred within the boundaries of the Muscogee Nation. He further asserts that the Muscogee Nation remains an established Indian reservation. He cites *McGirt v. Oklahoma*, 140 S. Ct.

2452 (2020), as newly discovered evidence of the latter premise, and of Oklahoma's lack of jurisdiction to try him for the 1983 murder.

McGirt is not evidence, newly discovered or otherwise. It is a judicial opinion. Oklahoma's alleged lack of jurisdiction is likewise not new evidence, and is immaterial in any event because "lack of jurisdiction is not one of the two authorized grounds upon which a successive § 2254 motion may be filed," *Prost v. Anderson*, 636 F.3d 578, 592 (10th Cir. 2011).

For these reasons, we deny Jackson's 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." 28 U.S.C. § 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