

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

July 8, 2022

Christopher M. Wolpert
Clerk of Court

In re: RUFUS LOU NELSON, JR.,

Movant.

No. 22-6102
(D.C. Nos. 5:21-CV-00264-C &
5:18-CR-00130-C-1)
(W.D. Okla.)

ORDER

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

A federal jury convicted Rufus Lou Nelson, Jr., of charges based on evidence that he shot his girlfriend. *United States v. Nelson*, 801 F. App’x 652, 654–55 (10th Cir. 2020). He received a 480-month prison sentence. *Id.* at 655. He has already sought relief under 28 U.S.C. § 2255. He now seeks authorization to file a second or successive § 2255 motion.¹ *See* 28 U.S.C. § 2244(b)(3)(A).

We may authorize a second or successive § 2255 motion if it relies on “a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.” § 2255(h)(2). Mr. Nelson says that his new claim relies on *Borden v. United States*, 141 S. Ct. 1817 (2021). In *Borden*, the Court considered whether an offense requiring a *mens rea* of mere recklessness can qualify as a “violent felony” under the Armed Career Criminal Act, 18 U.S.C. § 924(e). 141 S. Ct.

¹ Mr. Nelson is not represented by an attorney, so we construe his filings liberally. *See Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991).

at 1821–22. In doing so, the Court interpreted a statute; it did not announce a rule of constitutional law. *In re Rodriguez*, 18 F.4th 841, 841 (5th Cir. 2021) (per curiam). So *Borden* cannot justify a second or successive § 2255 motion. *See In re Shines*, 696 F.3d 1330, 1332 (10th Cir. 2012).

We deny Mr. Nelson authorization to file a new § 2255 motion. This denial “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. Wolpert', with a long horizontal stroke extending to the right.

CHRISTOPHER M. WOLPERT, Clerk