

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

November 8, 2023

Christopher M. Wolpert
Clerk of Court

In re: ROGER FRANK KINCAID,

Movant.

No. 23-6166
(D.C. No. 5:14-CV-00736-F)
(W.D. Okla.)

ORDER

Before **TYMKOVICH, KELLY**, and **PHILLIPS**, Circuit Judges.

More than a decade ago, an Oklahoma jury found Roger Frank Kincaid guilty of first-degree murder and assault with a deadly weapon. He has already challenged his convictions in a habeas application under 28 U.S.C. § 2254. He now moves for authorization to file another § 2254 application.¹ *See* 28 U.S.C. § 2244(b)(3)(A).

We may authorize a new § 2254 “claim only if it falls within one of two narrow categories—roughly speaking, if it relies on a new and retroactive rule of constitutional law or if it alleges previously undiscoverable facts that would establish” Mr. Kincaid’s innocence. *Banister v. Davis*, 140 S. Ct. 1698, 1704 (2020); *see also* § 2244(b)(2).

Mr. Kincaid’s new claims do not fit in either category. He seeks to bring two new claims, one alleging ineffective assistance from his trial attorney and the other alleging ineffective assistance from his appellate attorney. Yet he concedes, and we agree, that

¹ Mr. Kincaid represents himself, so we construe his filings liberally. *See Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991).

neither of these new claims relies on “new law or newly discovered evidence.” Mot. for Authorization at 6, 8. That reality ends our inquiry.

We deny Mr. Kincaid’s motion for authorization to file another § 2254 application.² 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

² Mr. Kincaid has filed a motion to stay these proceedings until he obtains trial transcripts and also a separate motion for leave to amend once he has the transcripts. We deny both motions for two independent reasons. First, we have a statutory obligation to rule on the motion for authorization no later than thirty days after Mr. Kincaid filed it. *See* § 2244(b)(3)(D). And second, we have no reason to think that the trial transcripts will allow Mr. Kincaid to show that authorization is warranted.