

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

September 19, 2024

Christopher M. Wolpert
Clerk of Court

In re: DARRIN LYNN PICKENS,

Movant.

No. 24-5101
(D.C. No. 4:06-CV-00343-TCK-SH)
(N.D. Okla.)

ORDER

Before **HOLMES**, Chief Judge, **HARTZ**, and **FEDERICO**, Circuit Judges.

Darrin Lynn Pickens, an Oklahoma prisoner proceeding pro se,¹ moves for authorization to file a second or successive 28 U.S.C. § 2254 habeas application. For the reasons explained below, we deny authorization.

Mr. Pickens is serving a life-without-parole sentence for murder. *See Pickens v. State*, 126 P.3d 612, 613–14, 621 (Okla. Crim. App. 2005) (describing his original prosecution, postconviction proceedings, and ultimate result). He unsuccessfully challenged this conviction by filing multiple § 2254 applications in federal court, and he now moves for authorization to file another.

We may authorize a new § 2254 claim only if the applicant makes a prima facie showing that “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

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

undiscoverable facts that would establish his innocence.” *Banister v. Davis*, 590 U.S. 504, 509 (2020); *see* 28 U.S.C. § 2244(b)(2), (b)(3)(C).

Mr. Pickens now seeks authorization based on the same ground that he raised in a motion for authorization he filed in this court in 2022. *Compare In re Pickens*, No. 22-5033, Mot. for Authorization at 5–6 (10th Cir. May 2, 2022), *with In re Pickens*, No. 24-5101, Mot. for Authorization at 8–9 (10th Cir. Aug. 27, 2024).

As he did in his motion in case no. 22-5033, Mr. Pickens seeks authorization to bring a claim based on newly discovered evidence that the Oklahoma state court lacked jurisdiction to prosecute him because he is a member of the Muscogee (Creek) tribe and the charged offense occurred within the boundaries of the Muscogee Nation, an established Indian reservation. And, as before, although he does not cite *McGirt v. Oklahoma*, 591 U.S. 894 (2020), he asserts the prevailing arguments from that decision. We denied authorization in case no. 22-5033 because “[t]he arguments that prevailed in *McGirt* and the authorities on which those arguments relied are not evidence, newly discovered or otherwise.” *In re Pickens*, No. 22-5033, Order at 2 (10th Cir. May 13, 2022).

For the same reasons we denied authorization in case no. 22-5033, we deny authorization in this case. 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).

We also warn Mr. Pickens that further attempts to obtain authorization, concerning this same underlying conviction or sentence, in which he presents arguments substantially similar to those presented here, may result in sanctions.

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