

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

January 23, 2024

Christopher M. Wolpert
Clerk of Court

In re: RONALD ERIC BOYD,

Movant.

No. 24-6007
(D.C. Nos. 5:16-CV-00645-R &
5:05-CR-00069-R-1)
(W.D. Okla.)

ORDER

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

Ronald Eric Boyd, a federal prisoner proceeding pro se, seeks authorization to file a second or successive 28 U.S.C. § 2255 motion to vacate, set aside, or correct his sentence. For the following reasons, we deny authorization.

In 2005, Mr. Boyd pled guilty to one count of being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1) and one count of possessing a firearm in relation to a drug-trafficking crime in violation of 18 U.S.C. § 924(c)(1)(A). He was sentenced to 262 months' incarceration, reflecting an enhancement under the Armed Career Criminal Act, *id.* § 924(e), due to his three previous convictions for serious drug offenses or violent felonies. Mr. Boyd has since filed several unsuccessful post-judgment motions attempting to collaterally attack his sentence.

Mr. Boyd now seeks authorization to file a second or successive § 2255 motion in district court to challenge his § 922(g)(1) conviction. He invokes the second gate-keeping requirement in § 2255(h), which means that to obtain authorization he

must make a prima facie showing that his new claim 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). *See* 28 U.S.C. § 2244(b)(3)(C) (stating that the movant must make a prima facie showing); *Case v. Hatch*, 731 F.3d 1015, 1028 (10th Cir. 2013) (same).

Mr. Boyd asserts that his § 922(g)(1) conviction is unconstitutional in light of *New York State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1 (2022). In *Bruen*, the Supreme Court held “the Second and Fourteenth Amendments protect an individual’s right to carry a handgun for self-defense outside the home,” and concluded that New York’s public-carry licensing regime was unconstitutional. *Id.* at 10. Mr. Boyd states that “*Bruen* announced a new rule of law that is retroactive to cases on collateral review.” Mot. at 16.

We need not decide whether *Bruen* announced a new rule of constitutional law. Even if it did, Mr. Boyd has not made a prima facie showing that the Supreme Court has made its decision retroactive to cases on collateral review. He mentions the retroactivity requirement generally but does not explain when or how the Supreme Court made *Bruen* retroactive. He does cite three circuit-court cases that consider the constitutionality of various sections of § 922(g) in light of *Bruen*—namely, *Range v. Attorney General*, 69 F.4th 96 (3d Cir. 2023) (en banc), *petition for cert. filed* (U.S. Oct. 10, 2023) (No. 23-374); *United States v. Rahimi*, 61 F.4th 443 (5th Cir. 2023), *cert. granted*, 143 S. Ct. 2688 (June 30, 2023) (No. 22-915); and *Atkinson v. Garland*, 70 F.4th 1018 (7th Cir. 2023). But these circuit-court rulings do not satisfy

the plain language of the statute, which requires “a new rule of constitutional law, made retroactive to cases on collateral review *by the Supreme Court*, that was previously unavailable.” § 2255(h)(2) (emphasis added).

Accordingly, the motion for authorization is denied. 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. Wolpert', with a long horizontal stroke extending to the right.

CHRISTOPHER M. WOLPERT, Clerk