

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

August 30, 2024

Christopher M. Wolpert
Clerk of Court

In re: RONALD DEAN LOWE,

Movant.

No. 24-6160
(D.C. No. 5:97-CV-00624-M)
(W.D. Okla.)

ORDER

Before **HOLMES**, Chief Judge, **PHILLIPS**, and **McHUGH**, Circuit Judges.

Ronald Dean Lowe, an Oklahoma inmate proceeding pro se, moves for authorization under 28 U.S.C. § 2244(b) to file a second or successive habeas application under 28 U.S.C. § 2254. We deny authorization.

In 1993, Mr. Lowe was convicted of two counts of first-degree murder and sentenced to life in prison. The Oklahoma Court of Criminal Appeals affirmed on direct appeal. In 1997, Mr. Lowe filed a § 2254 application challenging his murder convictions, which the district court denied on the merits. In 1999, he moved this court for authorization to file a second or successive application, which we denied. In May 2020, Mr. Lowe filed another § 2254 application, which the district court dismissed as an unauthorized second or successive application. That November he again sought this court's authorization to file a second or successive application. We denied that request. Mr. Lowe is now before us for a third time seeking authorization to file a second or successive § 2254 application.

A second or successive § 2254 application cannot proceed in the district court without first being authorized by this court. 28 U.S.C. § 2244(b)(3). We must determine whether Mr. Lowe’s “application makes a prima facie showing that [it] satisfies the requirements of” subsection (b). § 2244(b)(3)(C). Specifically, we may authorize a claim only if the petitioner has not raised it in a prior § 2254 application. *See* § 2244(b)(1). And we may authorize a new claim only if it (1) “relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable,” § 2244(b)(2)(A); or (2) relies on facts that could not have been discovered through due diligence and that establish the petitioner’s innocence by clear and convincing evidence, § 2244(b)(2)(B).

Mr. Lowe identifies seven claims in his motion for authorization, but none of them meet this standard. Three of his claims challenge the jurisdiction of the Oklahoma court of conviction based on his alleged Indian heritage. Citing the Major Crimes Act and the Indian Country Crimes Act, Mr. Lowe argues that because he and his victims are of Indian descent and the crimes occurred in Indian country, exclusive jurisdiction vested in federal court. He does not explicitly rely on *McGirt v. Oklahoma*, 591 U.S. 894 (2020), but we note that his 2020 motion for authorization sought to bring a claim challenging the state court’s jurisdiction under *McGirt*. To the extent Mr. Lowe seeks to reassert a *McGirt* claim here, we dismiss it under § 2244(b)(1). We also note that since his last motion for authorization, we decided *Pacheco v. Habti*, 62 F.4th 1233 (10th Cir.), *cert. denied*, 143 S. Ct. 2672 (2023). In that case, we held “*McGirt* announced no new constitutional right.” *Id.* at 1246.

To the extent Mr. Lowe raises new jurisdictional claims, such claims fail to satisfy the commands of § 2244(b)(2) because they rely on neither a new rule of constitutional law nor newly discovered evidence going to factual innocence. *Cf. Pacheco*, 62 F.4th at 1244-45 (rejecting factual innocence claim based on jurisdictional challenge in evaluating limitations period set forth in § 2244(d)(1)). Rather, Mr. Lowe argues his claims are based on a “new federal legal argument,” which he discovered through diligent research after gaining access to Westlaw and other legal resources. Mot. for Auth. at 28, 40, 55. A new legal argument is not new evidence and does not meet the statutory requirement for authorization.

Mr. Lowe’s other claims are (1) his counsel was ineffective; (2) certain prior employers are conspiring against him; (3) the State of Oklahoma conducted a shoddy criminal investigation; and (4) the trial court erred in its evidentiary rulings. Mr. Lowe concedes these claims do not rely on a new rule of law or newly discovered facts that establish his innocence, but on new federal legal arguments that he recently discovered through diligent research. Like his jurisdictional challenges, these claims fall well short of what § 2244(b)(2) commands.

Because Mr. Lowe has failed to satisfy the gatekeeping requirements of § 2244(b), we deny his motion for authorization. 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