

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

December 5, 2024

Christopher M. Wolpert
Clerk of Court

In re: JOSEPH JEROME DENNIS,

Movant.

No. 24-6245
(D.C. No. 5:00-CV-00658-C)
(W.D. Okla.)

ORDER

Before **HARTZ, KELLY**, and **BACHARACH**, Circuit Judges.

Joseph Jerome Dennis, proceeding pro se, seeks authorization to file a second or successive 28 U.S.C. § 2254 habeas application. For the following reasons, we deny authorization.

In 1996, an Oklahoma jury convicted Mr. Dennis of first-degree murder for shooting an auto mechanic in Chickasha, Oklahoma. The state trial court sentenced him to life in prison without the possibility of parole. The Oklahoma Court of Criminal Appeals (OCCA) upheld his conviction on direct appeal. He then filed an application for state post-conviction relief, which the state district court denied, and the OCCA affirmed the denial.

Mr. Dennis filed a § 2254 habeas application, which the federal district court denied. He attempted to appeal from the denial, but we denied him a certificate of appealability (COA).

Mr. Dennis now seeks authorization to file a second or successive habeas application. To obtain authorization, he must make a prima facie showing that:

A) . . . the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(B)(i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and

(ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

28 U.S.C. § 2244(b)(2); *see also Case v. Hatch*, 731 F.3d 1015, 1026-28 (10th Cir. 2013)

(discussing prima facie showing).

Mr. Dennis attempts to raise claims that rely on newly discovered evidence relating to his request for DNA testing. He states he filed a motion in state court requesting forensic DNA testing of evidence used in his case, including a .45-caliber bullet, but the court denied his motion and the OCCA upheld the denial. Mr. Dennis explains that at the 2023 hearing on his motion seeking DNA testing, the state informed the court it could not find any of the evidence used in the case to perform further testing. He claims the State of Oklahoma deprived him of due process and equal protection by preventing him from demonstrating his innocence through DNA testing.

The evidence at trial against Mr. Dennis included his confession. He said he pulled his gun but did not point it at the victim. He told the victim “not to make him do this” and to fix his girlfriend’s car. *Dennis v. State*, 990 P.2d 277, 279 (Okla. Crim. App. 1999). The victim then grabbed the gun, and it went off. *See id.* The bullet entered the victim’s forehead between his eyes, killing him instantly. It “apparently then went through a wall clock and the metal building wall and landed well away from the building,

where police later found it.” *Id.* In addition, witnesses saw Mr. Dennis driving the victim’s car afterwards and pulling the garage doors shut.

Mr. Dennis now argues that DNA testing would have shown that the bullet did not cause the victim’s death, that Chickasha police officers altered the crime scene, and that the state knowingly presented false testimony from a witness who testified he saw Mr. Dennis with a .45-caliber pistol. But in light of the evidence described above, he fails to explain how DNA testing, even if performed, would have established “by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found [him] guilty” of the murder. § 2244(b)(2)(B)(ii).

The motion for authorization fails to make the required prima facie showing based on newly discovered evidence. We therefore deny 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.” 28 U.S.C. § 2244(b)(3)(E).

Entered for the Court

A handwritten signature in black ink, appearing to read 'Christopher M. Wolpert', with a stylized, flowing script.

CHRISTOPHER M. WOLPERT, Clerk