

FILED

**United States Court of Appeals
Tenth Circuit**

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

July 31, 2025

**Christopher M. Wolpert
Clerk of Court**

In re: MARTIN MEZA,

Movant.

No. 25-2075
(D.C. No. 2:24-CV-00650-KG-JHR)
(D. N.M.)

ORDER

Before **MATHESON, McHUGH, and ROSSMAN**, Circuit Judges.

Martin Meza, a New Mexico prisoner proceeding pro se, moves for authorization to file a successive 28 U.S.C. § 2254 petition. We deny the motion for the reasons that follow.

I. BACKGROUND & PROCEDURAL HISTORY

In 2002, the State of New Mexico charged Mr. Meza with ten counts of sexual abuse against his minor stepdaughter. Specifically, counts 1–5 alleged five instances of first-degree criminal sexual penetration of a child younger than age 13, *see* N.M. Stat. Ann. § 30-9-11(D)(1), occurring between April 1, 2001, and April 25, 2002; and counts 6–10 alleged five instances of third-degree criminal sexual contact with a child younger than age 13, *see* N.M. Stat. Ann. § 30-9-13(C)(1), occurring during the same timeframe as counts 1–5. In essence, the state alleged repeated abuse over the course of about a year, with counts 1–5 comprising five instances of vaginal rape and counts 6–10 comprising five instances of touching the victim’s breasts or buttocks.

A jury found Mr. Meza guilty on all charges. In 2003, the state court sentenced him to an aggregate total of 90 years in prison. The New Mexico Court of Appeals affirmed in 2005. Between 2006 and 2019, Mr. Meza filed four habeas petitions in state court, all of which were denied or dismissed.

Mr. Meza filed his first § 2254 petition in 2020. As grounds, he attached his briefing from his first state-court habeas proceeding (in 2006), which mostly alleged ineffective assistance of counsel at various stages of the prosecution. The district court dismissed this petition as untimely and undeserving of equitable tolling. *See Meza v. Martinez*, 491 F. Supp. 3d 999, 1005–06 (D.N.M. 2020). Mr. Meza did not appeal.

Mr. Meza filed a second § 2254 petition in June 2024. The district court dismissed it for lack of jurisdiction because this court had not authorized it. Mr. Meza appealed but this court denied a certificate of appealability.

Mr. Meza filed a motion for authorization—the motion currently before us—on July 15, 2025.

II. LEGAL STANDARD

We may not grant authorization unless Mr. Meza makes “a prima facie showing that the [proposed § 2254 petition] satisfies the requirements of [§ 2244(b)].” 28 U.S.C. § 2244(b)(3)(C). This means the movant must make a prima facie showing that the proposed claim

(A) . . . 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.

§ 2244(b)(2).

III. ANALYSIS

Mr. Meza's motion alleges five habeas claims. The first three claims turn on a common theory so we will analyze them together. We will then analyze the fourth and fifth claims individually.

A. Claims 1, 2, and 3

Claims 1, 2, and 3 are all based on the idea that the State should not have charged Mr. Meza with five counts of criminal sexual penetration and five counts of criminal sexual contact. Instead, applying the double-jeopardy test announced in *Herron v. State*, 805 P.2d 624 (N.M. 1991), Mr. Meza says the state court should have concluded that all ten counts were a single offense, or, at a minimum, the first five counts were a single offense and likewise the second five counts.¹ Thus, claim 1

¹ *Herron* arose from a nineteen-count prosecution based on nineteen distinct sexual penetrations over the course of an hour-long rape. *See* 805 P.2d at 625. The defendant brought a double-jeopardy challenge, claiming the nineteen distinct counts were really a single continuous offense. *Id.* To resolve the issue, the New Mexico Supreme Court adopted a multi-factor balancing test with considerations such as “temporal proximity of penetrations” and “existence of an intervening event.” *Id.* at 628. *Herron* derived this test from various other state courts' decisions in similar contexts, *see id.*, but also stated it was interpreting the federal and New Mexico constitutional guarantees against double jeopardy together, *see id.* at 625 n.2. Thus,

alleges that the indictment should only have included one claim, or, at most, two claims. Based on the same reasoning, claim 2 alleges he should have been convicted of, at most, two offenses. And claim 3 argues he deserves a reduced sentence based on the foregoing.

Mr. Meza characterizes his application of the *Herron* double-jeopardy test as newly discovered evidence demonstrating his innocence of all but one or two counts. Mr. Meza’s opinion about how the state court should have applied *Herron* is not a “factual predicate for [a habeas] claim,” § 2244(b)(2)(B)(ii). And if it could be characterized as a factual predicate, it could “have been discovered previously through the exercise of due diligence,” *id.*, because the New Mexico Court of Appeals addressed and rejected Mr. Meza’s *Herron* claim on direct appeal in 2005. Also, Mr. Meza’s first state habeas petition, filed in 2006, alleged his trial counsel was ineffective for failing to pursue the same claim adequately. Thus, the claim has been available to Mr. Meza since well before his first § 2254 petition.

For these reasons, we may not authorize claims 1, 2, or 3.

B. Claim 4

Claim 4 is somewhat difficult to understand. Mr. Meza begins by quoting a section of the trial transcript where the prosecutor asks the case detective questions on redirect examination about rape kit tests—seemingly to address an issue raised on cross-examination about the lack of rape kit results. The detective states that a rape

Herron appears to establish New Mexico’s position about what a federal double-jeopardy challenge requires in this context.

kit test is very invasive for a child victim and something to be avoided if a less invasive exam by a physician is possible (which apparently happened here). The detective further states that, based on the eight-day lapse between the last reported rape and the date of the exam (again, apparently a physician's exam), the likelihood of a rape kit detecting semen in the victim's vagina on that date was very low.

Mr. Meza seems to assert the detective's testimony was unexpected and he had no opportunity to counter it, allegedly in violation of the Sixth Amendment's Confrontation Clause. He also makes contradictory assertions about further constitutional violations. On the one hand, he asserts, without elaboration, that the State *did* conduct a rape kit test but never disclosed the results, in violation of *Brady v. Maryland*, 373 U.S. 83 (1963). On the other hand, he claims the State violated his rights by *not* conducting a rape kit test, which would have detected no semen and therefore persuaded a jury of his innocence.

Regardless of the legal basis for this claim, Mr. Meza fails to make a prima facie showing that "the factual predicate for the claim could not have been discovered previously through the exercise of due diligence," § 2244(b)(2)(B)(i). To the contrary, his reliance on the trial transcript shows he knew of the factual predicate as of the detective's testimony, at the latest. We therefore may not authorize this claim.

C. Claim 5

The detective's testimony against Mr. Meza at trial included the detective's account of a confession Mr. Meza made to him. During that confession, the detective

and Mr. Meza spoke in Spanish. Mr. Meza claims he recently learned his trial attorney, who did not speak Spanish, never had the audiotape of the confession transcribed and translated to English. He therefore claims his trial attorney was unprepared to counter the detective's testimony about the confession, and the attorney therefore provided ineffective assistance of counsel.

Mr. Meza does not explain what his attorney would have learned if he had secured an English translation of the confession, nor does he explain how such a translation would have led to (or would itself have been) relevant evidence, in the light of which "no reasonable factfinder would have found the applicant guilty of the underlying offense," § 2244(b)(2)(B)(ii). We therefore may not authorize this claim.

IV. CONCLUSION

We deny the motion for authorization. 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 'CWolpert', with a long horizontal stroke extending to the right.

CHRISTOPHER M. WOLPERT, Clerk