

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

March 20, 2025

Christopher M. Wolpert
Clerk of Court

In re: CARLOS JACKSON,

Movant.

No. 25-3030
(D.C. Nos. 2:24-CV-02603-JWL &
2:05-CR-20018-JWL-1)
(D. Kan.)

ORDER

Before **TYMKOVICH, KELLY**, and **ROSSMAN**, Circuit Judges.

Carlos Jackson moves for authorization to file a second or successive 28 U.S.C. § 2255 motion to challenge his 2013 drug and firearms convictions. We deny authorization.

Mr. Jackson previously pursued relief under § 2255, *see United States v. Jackson*, 598 F. App'x 570, 571-72 (10th Cir. 2015), and thus he requires this court's authorization before he can file another § 2255 motion, *see* 28 U.S.C. § 2255(h). For authorization, he must show that his claims rely on (1) “newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found [him] guilty of the offense”; or (2) “a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.” *Id.*

Mr. Jackson's first proposed claim alleges prosecutorial misconduct. He avers that the prosecutor withheld exculpatory evidence in violation of *Brady v. Maryland*,

373 U.S. 83 (1963), and engaged in unethical and retaliatory plea negotiations. But he informs us that this first claim does not rely on any new law or new evidence.

See Mot. for Auth. at 9. It thus cannot be authorized. To the extent that his motion, liberally construed, relies upon the state bar’s subsequent disbarment of the prosecutor as new evidence, such evidence fails to establish his innocence of the underlying criminal offenses, as required for authorization under § 2255(h)(1). *See United States v. Williams*, 790 F.3d 1059, 1080 (10th Cir. 2015) (recognizing that to satisfy § 2255(h)(1), a movant “must establish actual innocence by clear and convincing evidence”).

The second proposed claim is that Mr. Jackson’s two attorneys were ineffective. He asserts that his first attorney knew that the prosecutor withheld evidence but did not inform him, and that his second attorney failed to investigate or raise the *Brady* issue at sentencing and failed to advocate for a particular reduction in the Sentencing Guidelines range that would have resulted in a lower sentence. Mr. Jackson asserts these claims rely on new evidence. The new evidence he describes, however, is a 2019 decision of the Judicial Council of the Tenth Circuit that publicly reprimanded the trial judge for committing misconduct. Mr. Jackson does not explain how such evidence supports his ineffective-assistance claims against his attorneys. In any event, the Judicial Council decision fails to establish Mr. Jackson’s innocence of the underlying criminal offenses, as required for authorization under § 2255(h)(1).

The third proposed claim is judicial misconduct, again based upon the 2019 Judicial Council decision. As just stated, however, this evidence does not establish

Mr. Jackson's innocence of the underlying criminal offenses, as required for authorization under § 2255(h)(1).

We deny the 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." 28 U.S.C. § 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