

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

January 31, 2025

Christopher M. Wolpert
Clerk of Court

In re: GREG ALLEN HENKE,

Movant.

No. 25-6008
(D.C. Nos. 5:23-CV-00121-HE &
5:21-CR-00137-HE-1)
(W.D. Okla.)

ORDER

Before **MATHESON, MORITZ, and FEDERICO**, Circuit Judges.

Greg Allen Henke is serving a federal prison sentence after pleading guilty to two crimes. He has already challenged his convictions and his sentence in a 28 U.S.C. § 2255 motion. He now moves for authorization to file another § 2255 motion.

Congress “has restricted the availability of second or successive § 2255 motions to claims involving either newly discovered evidence strongly suggestive of innocence or new rules of constitutional law made retroactive by the Supreme Court.” *Prost v. Anderson*, 636 F.3d 578, 581 (10th Cir. 2011); *see* § 2255(h).

This strict standard does not allow us to authorize Mr. Henke’s proposed motion. He intends to present a new theory of defense (entrapment). And he contends that he should be allowed to do so now because he failed to recognize earlier that the defense was available to him.¹ The problem is that the claim does not rely on newly discovered

¹ Mr. Henke represents himself, so we construe his filings liberally. *See Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). But the fact that he also represented

evidence or a new constitutional rule. Mr. Henke argues that evidence available when he filed his first § 2255 motion should still qualify as “new” because the district court failed to review it adequately in the prior proceedings. Mot. at 2 (internal quotation marks omitted). Evidence cannot be considered *newly discovered* if it was available when Mr. Henke filed his first § 2255 motion.

Mr. Henke cannot avoid the standard for authorization by asserting that his entrapment defense will reveal his actual innocence. Even claims of innocence must meet the statutory standard before we can authorize them to be filed in a second or successive § 2255 motion. *See Prost*, 636 F.3d at 589, 591.

We deny Mr. Henke authorization to file another § 2255 motion. This denial “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); *see In re Clark*, 837 F.3d 1080, 1083 (10th Cir. 2016).

Entered for the Court

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CHRISTOPHER M. WOLPERT, Clerk

himself in his first § 2255 proceeding does not allow us to authorize him to file claims now that he could have raised then. *See* § 2255(h).