

UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

---

In re:

JAMES RALPH DAWSON, JR.,

Movant.

No. 07-1340

---

ORDER  
Filed September 14, 2007

---

Before **BRISCOE**, **GORSUCH**, and **HOLMES**, Circuit Judges.

---

Movant James Ralph Dawson, Jr., a state prisoner proceeding pro se, has filed a motion for authorization to file a second or successive 28 U.S.C. § 2254 habeas corpus petition. Dawson was convicted in Colorado state court in 1992 of second-degree murder, attempted second-degree murder, and second-degree assault. His convictions were affirmed by the Colorado courts and his first state petition for post-conviction relief under Colorado Rule of Criminal Procedure 35(c) was denied. Dawson's second Rule 35(c) motion was pending in state court when he filed his first § 2254 petition in federal court in 2002. The district court denied that petition, and in 2003, this court denied him a certificate of appealability. *Dawson v. Williams*, No. 02-1398 (10th Cir. Jul. 2, 2003) (unpublished order).

A month later, Colorado denied Dawson's second Rule 35(c) motion. It ruled that the ineffective assistance of counsel claim Dawson sought to raise had been raised and denied in his first Rule 35(c) motion. Dawson then filed a third Rule 35(c) motion in 2005, claiming that the state court was discriminating against him because the court had granted other Rule 35(c) motions while denying his motion. The Colorado Court of Appeals affirmed the denial of that motion in 2007. In response, Dawson has filed this motion for authorization to file a second or successive § 2254 petition.

In his motion for authorization and his proposed § 2254 petition, Dawson seeks to present two claims: that the allegedly discriminatory state post-conviction proceedings violated his constitutional rights to (1) equal protection, and (2) access to the court. We deny the motion. We first note that Dawson's proposed challenges to Colorado's post-convictions proceedings are not cognizable in a federal habeas proceeding. *See Phillips v. Ferguson*, 182 F.3d 769, 772-73 (10th Cir. 1999) (holding that challenges to the constitutionality of state post-conviction procedures are not cognizable as independent claims in federal habeas corpus actions); *Sellers v. Ward*, 135 F.3d 1333, 1339 (10th Cir. 1998) (holding that when petitioner only asserts error in the state post-conviction procedure, no relief can be granted in federal habeas corpus). Second, Dawson has failed to make the necessary prima facie showing to obtain permission to file a second or successive § 2254 petition. *See* 28 U.S.C. § 2244(b)(2) (requiring

movant to show that his new claim either relies on a new rule of retroactively-applicable constitutional law, or depends on facts, previously undiscoverable through the exercise of due diligence, that would establish by clear and convincing evidence that he was not guilty of the offense). Dawson argues that he is relying on new evidence that the state court has engaged in invidious discrimination. Even if his claims were cognizable in habeas - which they are not - this purported new evidence does not demonstrate by clear and convincing evidence that Dawson is not guilty of the underlying offenses, as required by § 2244(b)(2)(B)(ii).

Accordingly, authorization is DENIED. This denial of authorization is not appealable and may not be the subject of a petition for rehearing or for a writ of certiorari. *See* 28 U.S.C. § 2244(b)(3)(E).

Entered for the Court

A handwritten signature in cursive script, reading "Elisabeth A. Shumaker", followed by a horizontal line extending to the right.

ELISABETH A. SHUMAKER, Clerk