

**UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT**

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In re:

TEDDY P. CHIQUITO,  
  
Movant.

No. 07-2276  
(D.C. No. 1:07-cv-630-MCA-ACT)  
(D. N.M.)

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ORDER  
Filed January 8, 2008

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Before **TACHA, EBEL, and O'BRIEN**, Circuit Judges.

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Movant Teddy P. Chiquito, a federal prisoner proceeding pro se, has filed a motion for authorization to file a second or successive 28 U.S.C. § 2255 motion to vacate, set aside or correct his sentence. Because Mr. Chiquito has failed to make a prima facie showing of either newly-discovered evidence of his actual innocence or an entitlement to relief under any new and retroactively-applied rule of constitutional law, *see* § 2255 para. 8, we deny authorization.

Mr. Chiquito was convicted in 2004 of two counts of assault and one count of discharge of a firearm, all occurring on an Indian reservation, and his conviction was affirmed on appeal. *United States v. Chiquito*, 175 F. App'x 215 (10th Cir. 2006). He filed his first § 2255 motion in July 2007, which was denied by the district court on September 28, 2007. Mr. Chiquito then filed a motion for

reconsideration. While that motion was pending, he filed a motion to supplement his § 2255 motion, seeking to raise a new claim not raised in his first § 2255 motion. The district court determined, correctly, that Mr. Chiquito's motion to supplement constituted a second or successive § 2255 motion, requiring circuit court authorization pursuant to § 2255 para. 8 and 28 U.S.C. § 2244(b)(3) before it could be filed in the district court. *See United States v. Nelson*, 465 F.3d 1145, 1148 (10th Cir. 2006) (holding motion to amend § 2255 motion was a successive motion requiring pre-authorization). Accordingly, the district court transferred the motion to this court for authorization. *See Coleman v. United States*, 106 F.3d 339, 341 (10th Cir. 1997) (per curiam).

In his motion for authorization, Mr. Chiquito states he seeks to present a claim that the jury was not properly instructed with respect to his affirmative defense of self-defense. He contends this claim is based on new law, citing a 1990 Supreme Court decision and a 2005 Ninth Circuit Court of Appeals decision. Neither of these cases, however, satisfies the authorization requirement in § 2255 para. 8 that a movant show that his claim relies on "a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable." Both cases cited by Mr. Chiquito were issued *before* the date of Mr. Chiquito's first § 2255 motion and, thus, plainly are not "previously unavailable" law. Mr. Chiquito also argues his claim is based on newly-discovered evidence because he was not previously aware of the cited

caselaw. This does not meet the § 2255 para. 8 requirement of “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 fact finder would have found [him] guilty of the offense.”

Accordingly, the motion for authorization is DENIED and the matter is DISMISSED. 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", with a long horizontal flourish extending to the right.

ELISABETH A. SHUMAKER, Clerk