

December 9, 2008

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

In re:

GENE ALLEN,

Movant.

No. 08-1464

ORDER

Before **KELLY, EBEL**, and **HARTZ**, Circuit Judges.

Gene Allen seeks authorization to file a second or successive 28 U.S.C. § 2254 habeas application challenging a 2001 Colorado state conviction. Earlier this year, this court denied a prior motion for authorization that Mr. Allen filed. *In re Allen*, No. 08-1021 (10th Cir. Feb. 29, 2008) (unpublished order).

As stated in No. 08-1021, a movant seeking to bring a second or successive § 2254 application may proceed only with a claim not presented in a prior application that “relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable,” 28 U.S.C. § 2244(b)(2)(A), or relies on facts that “could not have been discovered previously through the exercise of due diligence” and that “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,” *id.* § 2244(b)(2)(B). Mr. Allen apparently wishes to proceed under § 2244(b)(2)(B), the “new evidence” prong. Having reviewed his pro se motion, however, we cannot discern even the basic premise of his argument, much less the existence of new facts that “would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found” Mr. Allen guilty of the Colorado offense.

Mr. Allen’s motion for authorization to file a second or successive § 2254 application is DENIED. This denial of authorization is not appealable and “shall not be the subject of a for rehearing or for a writ of certiorari.” 28 U.S.C. § 2244(b)(3)(E).

Entered for the Court

A handwritten signature in cursive script, reading "Elisabeth A. Shumaker".

ELISABETH A. SHUMAKER, Clerk