

UNITED STATES COURT OF APPEALS August 18, 2011  
FOR THE TENTH CIRCUIT Elisabeth A. Shumaker  
Clerk of Court

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In re: JAMES E. BAKER,  
Movant.

No. 11-3240  
(D.C. Nos. 6:09-CV-01130-JTM &  
6:06-CR-10129-JTM-1)  
(D. Kan.)

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**ORDER**

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Before **HARTZ**, **GORSUCH**, and **MATHESON**, Circuit Judges.

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James E. Baker seeks authorization to file a second or successive motion for relief under 28 U.S.C. § 2255. *See id.* §§ 2244(b)(3)(A), 2255(h). We deny authorization.

Mr. Baker was convicted in 2006 of being a felon in possession of ammunition, and we affirmed his conviction on appeal. *United States v. Baker*, 508 F.3d 1321 (10th Cir. 2007). He subsequently filed a motion to vacate, correct, or set aside his conviction under § 2255 alleging several claims of ineffective assistance of counsel. The district court denied relief, and this court denied a certificate of appealability and dismissed his appeal. *United States v. Baker*, 371 F. App'x 987 (10th Cir.), *cert. denied*, 131 S. Ct. 341 (2010). After Mr. Baker failed to get relief on his first § 2255 motion, he sought authorization

to file a second § 2255 motion, in which to raise claims based on the Supreme Court's decisions in *District of Columbia v. Heller*, 554 U.S. 570 (2008), and *McDonald v. City of Chicago*, 130 S. Ct. 3020 (2010). We denied Mr. Baker authorization because his proposed claims failed to meet the requirements of § 2255(h). *In re Baker*, No. 10-3283, Order of Nov. 10, 2010.

Mr. Baker now seeks authorization to file yet another § 2255 motion, in which to raise a claim that his trial counsel provided constitutionally ineffective assistance when he failed to present a defense of entrapment by estoppel. We may grant Mr. Baker authorization to file a second or successive § 2255 motion only if he makes a prima facie showing that his proposed claim is based on either

(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 the movant 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.

28 U.S.C. § 2255(h). Mr. Baker concedes in his motion for authorization that his proposed claim is based on neither newly discovered evidence nor a new rule of constitutional law, and our review of his proposed claim leads to the same conclusion.

Accordingly, we deny Mr. Baker authorization to file a second or successive § 2255 motion. 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.”

*Id.* § 2244(b)(3)(E).

Entered for the Court,

A handwritten signature in cursive script that reads "Elisabeth A. Shumaker". The signature is written in black ink and has a long, sweeping tail that extends to the right.

ELISABETH A. SHUMAKER, Clerk