

March 11, 2011

UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

Elisabeth A. Shumaker  
Clerk of Court

In re:

STANLEY REMOND HARRIS,

Movant.

No. 11-6052

(D.C. Nos. 5:10-CV-00078-M and  
5:08-CR-00094-M-1)

ORDER

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

Stanley Remond Harris 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. Harris has failed to meet the standards for filing a successive § 2255 motion, we deny his motion for authorization.

This is the second motion for authorization that Mr. Harris has filed in the past two months. We denied his earlier request for authorization on January 26, 2011. On February 10, he filed a Fed. R. Civ. P. 60(b) motion in district court. On February 23, the court entered an order dismissing the motion for lack of jurisdiction because Mr. Harris was attempting to file an unauthorized successive § 2255 motion. On March 3, Mr. Harris filed the instant motion for authorization.

To obtain authorization to file a second or successive § 2255 motion, a federal prisoner must demonstrate that his proposed claims either depend on “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 [him] guilty of the offense,” § 2255(h)(1), or rely upon “a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable,” § 2255(h)(2).

The claim Mr. Harris seeks authorization for in his current motion is almost identical to the claim we denied authorization for on January 26. He asserts that he has “newly discovered evidence” that supports a claim that the district court erred by enhancing his sentence based on suppressed evidence. But he does not cite to any new evidence; instead, he cites to a case that he asserts he “recently discovered” although it was published over seventeen years ago and was therefore available when he filed his first § 2255 motion in January 2010. *See* Mot. for Auth. at 5 (citing to *United States v. Gilmer*, 811 F. Supp. 578 (D. Colo. 1993)). In his earlier motion for authorization, Mr. Harris sought to bring this same claim, although he referenced a different case to support his argument. *See In re Harris*, No. 11-6008, at 3 (10th Cir. Jan. 26, 2011) (unpublished order). As we explained in our order denying that request for authorization, “the discovery of cases and law that existed at the time of [Mr. Harris’s] first § 2255 motion does not

constitute either new evidence or new law.” *Id.* Accordingly, Mr. Harris has failed to meet the standards for authorization in § 2255(h).

Mr. Harris has now been instructed twice by this court that he may not receive authorization to bring a claim when he is relying solely on case law that was available to him at the time he filed his first § 2255 motion. We warn Mr. Harris that any further attempts to seek authorization for claims that do not meet the standards in § 2255(h) may lead to the imposition of sanctions.

We DENY the motion for authorization. This denial of authorization is not 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).

We note that Mr. Harris also attached a “Motion for Remand” to his motion for authorization. But the district court did not transfer Mr. Harris’s Rule 60(b) motion to this court for authorization; instead, the court dismissed the Rule 60(b) motion for lack of jurisdiction. As there is nothing before this court that could be remanded to the district court, we DENY the motion for remand as moot.

Entered for the Court,

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

ELISABETH A. SHUMAKER, Clerk