FILED
United States Court of Appeals
Tenth Circuit

April 6, 2011

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

In re: GLENN VINCENT ROBINSON, Movant.	No. 11-7008 (D.C. Nos. 6:10-CV-00461-JHP & 6:03-CR-00077-JHP-1) (E.D. Okla.)

ORDER

Before **BRISCOE**, Chief Judge, **LUCERO** and **HARTZ**, Circuit Judges.

Glenn Vincent Robinson, a federal prisoner appearing pro se, has moved for authorization to file a second or successive 28 U.S.C. § 2255 motion challenging his conviction. Before a federal prisoner may file a second or successive motion under § 2255, he must first obtain an order from the court of appeals authorizing the district court to consider the motion. 28 U.S.C. §§ 2244(b)(3)(A), 2255(h). We deny authorization.

Mr. Robinson was convicted in 2003 of two counts of attempted manufacture of methamphetamine and two counts of possession of a firearm in furtherance of a drug trafficking offense. On direct appeal, this court affirmed his convictions but vacated his sentences and remanded for resentencing. *See United States v. Robinson*, 435 F.3d 1244, 1246 (10th Cir. 2006). He was resentenced to

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120 months' and 60 months' imprisonment on count one and two, to be served concurrently; 120 months' imprisonment on count three, to be served consecutively to the term imposed on counts one and two, and 300 months' imprisonment on count four, to be served consecutively to the term imposed on count two. Mr. Robinson filed his first § 2255 motion in August 2008, asserting four ineffective assistance of counsel claims. The district court denied the § 2255 motion, *Robinson v. United States*, No. CIV-07-244, 2008 WL 162625 (E.D. Okla. Jan. 15, 2008), and Mr. Robinson did not appeal.

On December 1, 2010, Mr. Robinson attempted to file a second § 2255 motion in district court, but he failed to first seek or obtain authorization to do so, as required by §§ 2244(b)(3)(A) and 2255(h). The district court transferred the matter to this court pursuant to 28 U.S.C. § 1631, to give Mr. Robinson an opportunity to seek such authorization. *See In re Cline*, 531 F.3d 1249, 1252 (10th Cir. 2008) (per curiam) (permitting district courts to transfer unauthorized second or successive § 2255 motions to this court pursuant to 28 U.S.C. § 1631 if it is in the interest of justice to do so). 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).

In his motion for authorization, Mr. Robinson seeks to challenge the constitutionality of a police search related to his conviction. He concedes that he has raised an illegal search issue in a prior motion, and that his claim does not rely upon any new evidence. He asserts, however, that it is based on a new rule of law, namely *Arizona v. Gant*, 129 S. Ct. 1710 (2009). In that decision, the Court held that a search of a vehicle incident to arrest may include the passenger compartment only if the "arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search," *id*. at 1719, or "when it is reasonable to believe that evidence of the offense of arrest might be found in the vehicle," *id*. at 1714.

The Supreme Court has not made *Gant* retroactive to cases on collateral review. "[A] new rule is not made retroactive to cases on collateral review unless the Supreme Court holds it to be retroactive." *Tyler v. Cain*, 533 U.S. 656, 663 (2001). Therefore, Mr. Robinson's proposed claim does not meet the requirements for authorization under § 2255(h)(2).

Mr. Robinson's motion for authorization is DENIED. 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).

Entered for the Court,

ELISABETH A. SHUMAKER, Clerk