

**FILED**

**United States Court of Appeals  
Tenth Circuit**

**UNITED STATES COURT OF APPEALS**

**July 31, 2012**

**FOR THE TENTH CIRCUIT**

**Elisabeth A. Shumaker  
Clerk of Court**

In re:

MANUEL SAINZ-OCHOA,

Movant.

No. 12-3172  
(D.C. No. 2:08-CR-20057-KHV-1)  
(D. Kan.)

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**ORDER**

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Before **KELLY, GORSUCH, and HOLMES**, Circuit Judges.

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Manuel Sainz-Ochoa, a pro se federal prisoner, seeks authorization to file a second or successive 28 U.S.C. § 2255 motion. We DENY authorization.

In 2009, Mr. Sainz-Ochoa pleaded guilty to conspiracy to distribute more than 500 grams of methamphetamine, and he was sentenced to 121 months' imprisonment. In 2011, he filed in the district court a motion to reconsider his sentence, which the court construed as a § 2255 motion to vacate. Therein, Mr. Sainz-Ochoa argued that his trial attorney committed ineffective assistance by not informing the court at sentencing of his serious health problems and his cultural/familial ties to the United States. The district court denied relief, concluding that counsel had in fact informed the court about Mr. Sainz-Ochoa's health issues, and that the plea agreement barred any request for a departure or a variance below the applicable guidelines range.

Mr. Sainz-Ochoa appealed. We denied a certificate of appealability and dismissed the appeal. *See United States v. Sainz-Ochoa*, 434 F. App'x 761 (10th Cir. 2011).

In June 2012, Mr. Sainz-Ochoa filed in the district court a “Motion under Rule 60.” He argued that trial counsel rendered ineffective assistance by (1) not investigating his actual innocence; and (2) not seeking downward departures on the bases that he was a minor participant in the charged criminal activities and had accepted voluntary deportation to Mexico. The district court construed the motion as seeking substantive relief under § 2255, and it transferred the case to this court, where Mr. Sainz-Ochoa filed the instant motion for authorization to file a second or successive § 2255 motion.

“Federal prisoners are barred from attacking their federal convictions through second or successive § 2255 motions except in very limited circumstances.” *United States v. Kelly*, 235 F.3d 1238, 1241 (10th Cir. 2000). “Second or successive § 2255 motions are restricted to claims involving either newly discovered evidence strongly suggestive of innocence or new rules of constitutional law made retroactive by the Supreme Court.” *Brace v. United States*, 634 F.3d 1167, 1170 (10th Cir. 2011) (quotation and ellipsis omitted). In his motion for authorization, Mr. Sainz-Ochoa concedes that his claims do not rest on either a new rule of law or newly discovered evidence.

Accordingly, we DENY the motion for authorization. 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.” 28 U.S.C. § 2244(b)(3)(E).

Entered for the Court

A handwritten signature in cursive script, reading "Elisabeth A. Shumaker", written over a light blue dotted grid background.

ELISABETH A. SHUMAKER, Clerk