

March 22, 2012

UNITED STATES COURT OF APPEALS

Elisabeth A. Shumaker  
Clerk of Court

FOR THE TENTH CIRCUIT

In re:

ROGER JACKMAN,  
  
Movant.

No. 12-4049  
(D.C. No. 1:03-CR-00055-TC-1)  
(D. Utah)

ORDER

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

Roger Jackman, proceeding pro se, moves for authorization to file a second or successive 28 U.S.C. § 2255 motion challenging his conviction for sexual exploitation of a child in violation of 18 U.S.C. § 2251 (District of Utah case No. 1:03-CR-00055-TC-1). We deny authorization.

Congress has placed strict limitations on second or successive § 2255 motions. Such a motion cannot proceed in the district court without first being authorized by this court. *See id.* § 2255(h); *id.* § 2244(b)(3). This court may authorize a claim only if the prisoner makes a prima facie showing that the claim relies on (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 [him] 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.”

*Id.* § 2255(h); *see also id.* § 2244(b)(3)(C). Mr. Jackman relies on § 2255(h)(1), the “new evidence” prong, to support five proposed claims.

The first claim is based on a letter written by a psychologist stating that, as Mr. Jackman puts it, “under oath, a client confessed that all actions were the clients, not [Mr. Jackman’s].” Mot. for Auth. at 6. Mr. Jackman informs us that his public defender withheld the letter from him until a year after his sentencing. His first § 2255 motion, however, was filed more than a year after he was sentenced. Thus, Mr. Jackman has not shown that the psychologist’s letter is “newly discovered” so as to satisfy § 2255(h)(1). Further, he has not shown that the letter constitutes “clear and convincing evidence” that no reasonable factfinder would have found him guilty of violating § 2251.

The remaining four claims are that: Mr. Jackman should have been able to appeal because the district court told him he could appeal a sentence greater than 120 months, and he received a sentence of 135 months; his counsel was ineffective by abandoning him when he sought to appeal; the presentence report contained errors that went uncorrected; and his counsel violated his right to due process by unduly delaying the criminal proceeding until he was so worn down that he was forced to plead guilty. The basis for each of these claims was or should have been apparent to Mr. Jackman at the time the complained-of actions

were occurring (and therefore before he filed his first § 2255 motion). The facts underlying these claims do not constitute the “newly discovered” and “clear and convincing” evidence required to satisfy § 2255(h)(1).

The motion for authorization is DENIED. 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", with a long horizontal flourish extending to the right.

ELISABETH A. SHUMAKER, Clerk