

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

August 9, 2012

FOR THE TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

In re:

CHRISTOPHER DALE MASTERS,

Movant.

No. 12-7052
(D.C. No. 6:04-CR-00104-RAW-1)
(E.D. Okla.)

ORDER

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

Christopher Dale Masters, a pro se federal prisoner, seeks authorization to file a second or successive 28 U.S.C. § 2255 motion. We DENY authorization.

In 2004, Mr. Masters pleaded guilty to one count of maintaining a place for the purpose of manufacturing, distributing and using methamphetamine, and he was sentenced to twenty years' imprisonment. As permitted by the plea agreement, however, he appealed from the denial of his suppression motion. This court affirmed. *United States v. Masters*, 172 F. App'x 230 (10th Cir. 2006).

In 2007, Mr. Masters filed his first motion for § 2255 relief. The district court granted the government's motion to enforce the plea agreement's waiver of collateral attacks, and it dismissed Mr. Masters's motion. This court affirmed. *United States v. Masters*, 317 F. App'x 750 (10th Cir. 2009).

After attempting to file an unauthorized second or successive § 2255 petition in the district court, *Masters v. United States*, No. CIV-12-114-RAW

(E.D. Okla. filed Mar. 8, 2012), Mr. Masters now requests authorization from this court to pursue § 2255 relief. In his request, he claims that (1) the search of his residence was unlawful because he was illegally detained and there was no search warrant; and (2) his trial attorney did not discuss the guilty plea with him, did not investigate the case, and “refused to present evidence and witnesses in mitigation of punishment,” Mot. at 8(a).

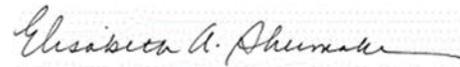
“Federal prisoners are barred from attacking their federal convictions through second or successive § 2255 motions except in very limited circumstances.” *United States v. Kelly*, 235 F.3d 1238, 1241 (10th Cir. 2000). “Second or successive § 2255 motions are restricted to claims involving either newly 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).

Mr. Masters contends that his claims are based on a new rule of constitutional law announced in *Padilla v. Kentucky*, 130 S. Ct. 1473 (2010) (holding that the Sixth Amendment requires criminal-defense attorneys to advise their clients about not only the direct consequences of a guilty plea, but also about the potential collateral consequences, such as deportation). But even assuming that *Padilla*’s holding has some applicability to Mr. Masters’ case, “*Padilla* does not apply retroactively to cases on collateral review.” *United States v. Chang Hong*, 671 F.3d 1147, 1150 (10th Cir. 2011).

Thus, Mr. Masters cannot obtain authorization to file a second or successive § 2255 motion based on *Padilla*. To the extent he may be attempting to gain authorization under § 2255(h)(1) for newly discovered evidence establishing innocence, none of his claims reference any such 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 horizontal line.

ELISABETH A. SHUMAKER, Clerk