

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

July 19, 2013

FOR THE TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

In re:

STEPHEN VINCENT HUNT,

Movant.

No. 13-1301
(D.C. Nos. 1:10-CV-00447-DME &
1:06-CR-00155-DME-1)
(D. Colo.)

ORDER

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

Stephen Vincent Hunt seeks authorization to file a second or successive 28 U.S.C. § 2255 motion. Because Mr. Hunt cannot meet the requisite conditions for authorization, we deny the motion and dismiss this proceeding.

Mr. Hunt was convicted after a jury trial of six counts of bank robbery in violation of 18 U.S.C. §§ 2113(a), (d) and an accompanying six counts of firearms possession in violation of 18 U.S.C. § 924(c). He was sentenced to a lengthy prison term of 1,760 months based in large part on the mandatory minimum sentences for the § 924(c) counts. He appealed and we affirmed the district court's judgment. *See United States v. Hunt*, No. 07-1518, 2009 WL 175063, at *1 (10th Cir. Jan. 27, 2009). Mr. Hunt then filed a 28 U.S.C. § 2255 motion to vacate, which the district court denied. He sought a certificate of appealability to appeal from the district court's decision, but we denied his request. *See United States v. Hunt*, 435 F. App'x 721, 723 (10th Cir. 2011).

Mr. Hunt now seeks authorization to file a second or successive § 2255 motion to challenge the mandatory minimum sentences from the § 924(c) counts because the facts triggering those sentences were found by a judge, not a jury. He contends that the Supreme Court's recent decision in *Alleyne v. United States*, 133 S. Ct. 2151 (2013), establishes a new rule of constitutional law that entitles him to authorization. *Alleyne* overruled *Harris v. United States*, 536 U.S. 545 (2002), and held that under the Sixth Amendment:

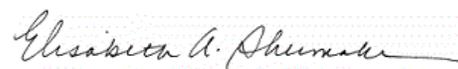
Any fact that, by law, increases the penalty for a crime is an “element” that must be submitted to the jury and found beyond a reasonable doubt. Mandatory minimum sentences increase the penalty for a crime. It follows, then, that any fact that increases the mandatory minimum is an “element” that must be submitted to the jury.

Alleyne, 133 S. Ct. at 2155.

We need not decide, however, whether *Alleyne* establishes a new rule of constitutional law. In order to meet the standard for authorization in § 2255(h)(2), the second or successive claims must be based on “a new rule of constitutional law, *made retroactive to cases on collateral review by the Supreme Court*, that was previously unavailable.” *Id.* (emphasis added). We have explained that “a new rule is made retroactive to cases on collateral review only when the Supreme Court *explicitly holds* that the rule it announced applies retroactively to such cases.” *Bey v. United States*, 399 F.3d 1266, 1268 (10th Cir. 2005). Because the Supreme Court has not held that the *Alleyne* decision applies retroactively to cases on collateral review, Mr. Hunt has not met the standard for authorization in § 2255(h)(2).

Accordingly, we deny his motion. 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 in black ink on a white background.

ELISABETH A. SHUMAKER, Clerk