

FILED

United States Court of Appeals  
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

April 24, 2013

Elisabeth A. Shumaker  
Clerk of Court

In re:

SAMUEL TRUJILLO,

Movant.

No. 13-6071  
(D.C. No. 5:09-CV-00625-R)  
(W.D. Okla.)

**ORDER**

Before **O'BRIEN, EBEL, and MATHESON**, Circuit Judges.

Samuel Trujillo, an Oklahoma state prisoner proceeding pro se, seeks authorization to file a second or successive 28 U.S.C. § 2254 habeas petition challenging his 2003 drug-trafficking conviction. We deny authorization.

Trujillo's habeas petition cannot proceed in the district court without first being authorized by this court. *See* 28 U.S.C. § 2244(b)(3). We may authorize a claim only if the prisoner has not raised it in a previous § 2254 habeas petition. *See id.* § 2244(b)(1). We may not authorize a new claim unless it satisfies one or both of the requirements specified in § 2244(b)(2). A new claim must rely (1) "on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable," or (2) on facts that "could not have been discovered previously through the exercise of due diligence" and that "would be sufficient to establish by clear and convincing evidence that, but for constitutional

error, no reasonable factfinder would have found the applicant guilty of the underlying offense.” *Id.* § 2244(b)(2)(A)-(B).

Trujillo asserts that his trial counsel provided ineffective assistance by advising him to reject the prosecution’s pre-trial offer of a thirty-year sentence in exchange for his guilty plea. He was subsequently convicted by a jury and sentenced to life in prison without the possibility of parole. Citing the Supreme Court’s decisions in *Missouri v. Frye*, 132 S. Ct. 1399 (2012), and *Lafler v. Cooper*, 132 S. Ct. 1376 (2012), Trujillo contends that this claim relies on a “new rule of constitutional law” under § 2244(b)(2)(A).

*Frye* and *Lafler* held that the Sixth Amendment right to counsel may be violated when defense counsel fails to inform a defendant of a plea offer from the government, *Frye*, 132 S. Ct. at 1404, 1410-11, or when a defendant receives a harsher sentence as a result of his attorney’s constitutionally deficient advice to reject a plea bargain, *Lafler*, 132 S. Ct. at 1383, 1390-91. But “*Frye* and *Lafler* do not satisfy [§ 2244(b)(2)(A)] because they do not establish a new rule of constitutional law.” *In re Graham*, No. 13-3082, \_\_\_ F.3d \_\_\_, 2013 WL 1736588, at \*2 (10th Cir. Apr. 23, 2013) (per curiam). Accordingly, 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", written in black ink on a white background.

ELISABETH A. SHUMAKER, Clerk