

FILED

United States Court of Appeals  
Tenth Circuit

UNITED STATES COURT OF APPEALS

January 7, 2014

FOR THE TENTH CIRCUIT

Elisabeth A. Shumaker  
Clerk of Court

In re: JAMES JOEL HOBBS,

Movant.

No. 13-6231  
(D.C. No. 5:13-CV-00279-HE)  
(W.D. Okla.)

ORDER

Before **KELLY, O'BRIEN**, and **PHILLIPS**, Circuit Judges.

This matter arises out of a second or successive habeas petition James Joel Hobbs filed in the district court challenging his 1996 Oklahoma conviction for first-degree murder. Noting that the petition had not been authorized as required by 28 U.S.C. § 2244(b)(3), the district court transferred it to this court. Mr. Hobbs has now filed alternative motions requesting a remand for determination of the petition on the merits by the district court or authorization of the petition by this court. He has also filed a motion seeking protective custody in a single cell for the remainder of his life-without-parole sentence in the state facility where he is incarcerated. We deny all three motions for reasons explained below.

The motion for remand is plainly meritless. Mr. Hobbs does not advance any argument that the district court improperly characterized his pleading as a second or successive habeas petition. The obscure allegations of treason and genocide, and associated invocation of various Articles and Amendments of the Constitution, that he includes in his motion purportedly to justify circumvention of the authorization

requirements in § 2244(b) do not exempt him from these jurisdictional constraints categorically imposed by Congress on all second or successive petitions.

The motion for authorization is equally unavailing. To obtain authorization, Mr. Hobbs must make a prima facie showing that his proposed habeas petition relies on either (1) “a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court that was previously unavailable,” or (2) a “factual predicate . . . [that] could not have been discovered previously through the exercise of due diligence” and “would be sufficient to establish by clear and convincing that, but for constitutional error, no reasonable factfinder would have found [him] guilty of the underlying offense.” 28 U.S.C. § 2244(b)(2); *see also id.* 2244(b)(3)(C). The motion for authorization endeavors, unsuccessfully, to draw justification through both of these means.

It is not at all clear how many of Mr. Hobbs’s vague and rambling allegations regarding treason, genocide, psychological warfare, Masonic machinations, and governmental collusion relate to the new rule of law and new evidence he cites, but neither of the latter satisfies the applicable statutory criteria in any event. The new rule of law he cites is the Antiterrorist and Effective Death Penalty Act of 1996 (AEDPA), but AEDPA did not post-date his prior habeas petition nor did it reflect a rule of *constitutional* law, as required by § 2244(b)(2)(A). The new evidence he cites—the “‘paper trail’ found within every courthouse in the United States of America revealing psychological warfare being used on the petitioner and the citizens

of America,” Mot. for Auth. at 10, and the “‘twelve year’ cycle of energy that has five different levels” underlying the alleged psychological warfare, *id.* at 10-E—is alluded to in a manner far too conclusory to show, in even a prima facie way, that it satisfies the discovery, diligence, and factual-innocence criteria in § 2244(b)(2)(B).

Finally, the motion for protective custody is too vague and unsubstantiated to warrant our interference in his confinement status, particularly in connection with the meritless proceedings currently before us.

The motions for remand, for authorization under § 2244(b), and for protective custody are accordingly denied. The denial of authorization under § 2244(b) “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 light-colored background.

ELISABETH A. SHUMAKER, Clerk