

FILED

United States Court of Appeals  
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

September 30, 2013

Elisabeth A. Shumaker  
Clerk of Court

In re:

PORFIRIO GATICA-RODRIGUEZ,

Movant.

No. 13-7057  
(D.C. Nos. 6:13-CV-00375-JHP;  
6:10-CV-00202-JHP &  
6:09-CR-00060-JHP-1)  
(E.D. Okla.)

---

**ORDER**

---

Before **LUCERO, O'BRIEN**, and **BACHARACH**, Circuit Judges.

---

Porfirio Gatica-Rodriguez moves for authorization to file a second or successive 28 U.S.C. § 2255 motion to vacate, set aside, or correct his sentence for possession with intent to distribute methamphetamine. He contends that *Alleyne v. United States*, 133 S. Ct. 2151 (2013), established a new rule of constitutional law that entitles him to authorization under § 2255(h)(2). We have recently explained, however, that the Supreme Court has not made *Alleyne* retroactive to cases on collateral review as required by § 2255(h)(2). See *In re Payne*, \_\_\_ F.3d \_\_\_, 2013 WL 5200425, at \*1-2 (10th Cir. Sept. 17, 2013). Accordingly, Mr. Gatica-Rodriguez cannot meet the standard for authorization, and 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