

FILED

United States Court of Appeals  
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

January 17, 2014

Elisabeth A. Shumaker  
Clerk of Court

In re:

MICHAEL D. STEIN,  
  
Movant.

No. 14-1020  
(D.C. No. 1:09-CV-02389-WYD)  
(D. Colo.)

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**ORDER**

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Before **GORSUCH, HOLMES, and BACHARACH**, Circuit Judges.

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Michael D. Stein seeks authorization under 28 U.S.C. § 2244(b) to file a second or successive habeas corpus application challenging his Colorado conviction for attempted sexual exploitation of a child, Colo. Rev. Stat. § 18-6-403. We deny authorization.

Mr. Stein specifies one claim he wishes to pursue: “18-6-403, as it existed in 2003-2004, was unconstitutional, being overly broad and abridging the freedom to engage in a substantial amount of lawful speech protected by the First and Fourteenth Amendments of the United States Constitution.” Motion Requesting Permission to File a Second Writ of Habeas Corpus Pursuant to 28 USC 2254, at 2. Two distinct considerations preclude our authorization of this claim.

First of all, it appears to be a version of a claim Mr. Stein already pursued in his first habeas application, which challenged the constitutionality of his conviction under Section 18-6-403 on First Amendment grounds. Insofar as it is the same claim,

we cannot authorize it. We may authorize a second or successive application only with respect to claims “not presented in a prior application.” 28 U.S.C. § 2244(b)(2). Repetitious claims must simply be dismissed. *See id.* § 2244(b)(1).

Secondly, to the extent it is a new claim, Mr. Stein does not satisfy either of the two grounds for authorization in § 2244(b)(2). He does not show that the claim relies on a previously unavailable rule of constitutional law, *see* § 2244(b)(2)(A), or a previously undiscoverable factual predicate, *see* § 2244(b)(2)(B), since he offers no law or facts that were not available at the time of his prior habeas proceeding. *See Nguyen v. Gibson*, 162 F.3d 600, 601 (10th Cir. 1998) (per curiam) (denying authorization under § 2244(b)(2)(A) and (B) where pertinent law and facts were known when prior habeas application was filed).

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



ELISABETH A. SHUMAKER, Clerk