

FILED

United States Court of Appeals  
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

August 26, 2014

Elisabeth A. Shumaker  
Clerk of Court

In re:

NORMAN A. PARADA,

Movant.

No. 14-3161

(D.C. Nos. 5:11-CV-04048-JAR &  
5:03-CR-40053-JAR-1)  
(D. Kan.)

**ORDER**

Before **KELLY, MATHESON, and McHUGH**, Circuit Judges.

Norman A. Parada, a federal prisoner proceeding pro se, seeks authorization to file a second or successive 28 U.S.C. § 2255 motion. Because Mr. Parada cannot meet the conditions for authorization, we deny the motion and dismiss this proceeding.

Mr. Parada is serving a term of 405 months' imprisonment for two drug trafficking convictions. The district court denied his first 28 U.S.C. § 2255 motion, and we denied his request for a certificate of appealability. He now seeks authorization to file a second or successive § 2255 motion. To be entitled to authorization, he must show that his new § 2255 claim relies on:

(1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found [him] guilty of the offense; or (2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

28 U.S.C. § 2255(h).

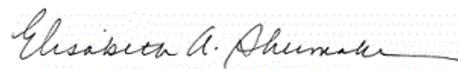
Mr. Parada seeks to bring a new claim that his sentence was improperly enhanced. He contends that one of the convictions that was used to support his enhancement was not sufficient to trigger the enhancement. He asserts that he recently discovered this information by having someone locate his criminal records in the archives. He argues that his attorney was ineffective for failing to request these records and for failing to challenge the enhancement.

To receive authorization based on newly discovered evidence, the movant must show that the new evidence demonstrates actual innocence of the offense; § 2255(h)(1) may not be used for sentencing challenges. *See* 28 U.S.C. § 2255(h)(1); *In re Dean*, 341 F.3d 1247, 1248 (11th Cir. 2003) (“Section 2255’s newly discovered evidence exception . . . does not apply to claims asserting sentencing error.”); *see also Reid v. Oklahoma*, 101 F.3d 628, 630 (10th Cir. 1996) (recognizing that actual innocence does not apply to non-capital sentencing challenges). Mr. Parada has therefore failed to meet the standard for authorization in § 2255(h).

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 over a light blue dotted grid background.

ELISABETH A. SHUMAKER, Clerk