

FILED

United States Court of Appeals  
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

September 11, 2014

Elisabeth A. Shumaker  
Clerk of Court

In re:

PIYARATH S. KAYARATH,

Movant.

No. 14-3172  
(D.C. Nos. 6:01-CV-03267-MLB &  
6:94-CR-10128-WEB-2)  
(D. Kan.)

ORDER

Before **TYMKOVICH, BACHARACH, and McHUGH**, Circuit Judges.

Piyarath S. Kayarath seeks authorization to file a second or successive 28 U.S.C. § 2255 motion based on the Supreme Court’s recent ruling in *Rosemond v. United States*, 134 S. Ct. 1240 (2014). Section 2255(h)(2) permits authorization when a second or successive motion relies on “a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.” But *Rosemond* does not meet this standard because it involved an issue of statutory interpretation,<sup>1</sup> not a new rule of constitutional law, *see In re Shines*, 696 F.3d 1330, 1332 (10th Cir. 2012) (per curiam) (explaining that cases concerning statutory interpretation cannot meet the standard in § 2255(h)(2)), and the Supreme

<sup>1</sup> As Mr. Kayarath noted in his motion, in *Rosemond*, “the Court pronounced a new statutory interpretation of the law governing aiding and abetting under [18] U.S.C. § 2.” Mot. for Auth. at 1; *see also id.* at 11 (“This authorization is sought on the basis that the Supreme Court announced a new statutory interpretation of Title 18 U.S.C. § 2 . . .”).

Court has not directed that *Rosemond* should apply retroactively to cases on collateral review, *see In re Payne*, 733 F.3d 1027, 1029-30 (10th Cir. 2013) (explaining that to meet § 2255(h)(2)'s requirement the Supreme Court must hold that a decision is retroactively applicable to cases on collateral review).

Accordingly, we deny the motion for authorization. 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 horizontal dotted line.

ELISABETH A. SHUMAKER, Clerk