

FILED

United States Court of Appeals  
Tenth Circuit

UNITED STATES COURT OF APPEALS

March 20, 2015

FOR THE TENTH CIRCUIT

Elisabeth A. Shumaker  
Clerk of Court

In re:

ALVIN PARKER,

Movant.

No. 15-6035  
(D.C. Nos. 5:13-CV-01365-D,  
5:05-CV-01252-T & 5:96-CV-00335-T)  
(W.D. Okla.)

ORDER

Before **LUCERO**, **TYMKOVICH**, and **PHILLIPS**, Circuit Judges.

Alvin Parker moves for authorization to file a successive 28 U.S.C. § 2254 application challenging his Oklahoma conviction for second degree murder. He seeks authorization under 28 U.S.C. § 2244(b)(2), alleging that prosecution witness Glenn Briggs, who since has recanted his testimony, committed perjury at trial.

This is not the first time Mr. Parker has requested authorization for a claim based on perjury and recantation by Briggs. More than a year ago, this court authorized him to pursue the claim, although we noted it was a “close question” whether he had made a prima facie showing of constitutional error. *In re Parker*, No. 13-6254 (10th Cir. Dec. 5, 2013) (unpublished order). Mr. Parker duly filed his § 2254 application in district court, but the court denied relief because he failed to present credible evidence to support his allegations that the prosecutor knew Briggs’ testimony was false. *See Parker v. Martin*, 589 F. App’x 866, 868-69 (10th Cir.

2014). This court denied a certificate of appealability and dismissed his appeal. *See id. at 867.*

Mr. Parker now seeks to remedy his lack of evidence, presenting with the instant motion for authorization a January 29, 2015, letter, purportedly from Briggs, explicitly stating that the prosecutor knew that Briggs' testimony was false. Even assuming that the un-notarized, unsworn letter is sufficient to support a motion for authorization, however, this statement comes too late.

Under § 2244(b)(1), “[a] claim presented in a . . . successive habeas corpus application under section 2254 that was presented in a prior application shall be dismissed.” Mr. Parker was authorized to, and did, present in a § 2254 application his claim that Briggs committed perjury with the prosecutor's knowledge. Therefore, § 2244(b)(1) requires the dismissal of the claim. And that being so, this court cannot authorize the claim under § 2244(b)(2). *See Gonzalez v. Crosby*, 545 U.S. 524, 530 (2005) (“[B]efore the district court may accept a successive petition for filing, the court of appeals must determine that it presents *a claim not previously raised* that is sufficient to meet § 2244(b)(2)'s new-rule or actual-innocence provisions.” (emphasis added)); *In re Rains*, 659 F.3d 1274, 1275 (10th Cir. 2011) (per curiam) (noting the “mandatory dismissal requirement of § 2244(b)(1)” and denying authorization); *Allen v. Massie*, 236 F.3d 1243, 1245 (10th Cir. 2001) (“Section 2244(b)(1) is clear . . . that ‘[a] claim presented in a second or successive habeas corpus application under section 2254 that was presented in a prior

application shall be dismissed.’ Accordingly, [movant] is not entitled to file a second or successive § 2254 habeas petition for the purpose of relitigating her claims of ineffective assistance of counsel.”).

The motion for authorization is denied. 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). Mr. Parker is put on notice that because he has already presented the Briggs perjury claim in a § 2254 application, this court cannot authorize that claim. Accordingly, if Mr. Parker again moves for authorization of a successive § 2254 application based on allegations that Briggs committed perjury, he may be subject to sanctions.

Entered for the Court



ELISABETH A. SHUMAKER, Clerk