

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

July 26, 2016

FOR THE TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

In re: ETHELWALDO TORRES
RODRIGUEZ,

Movant.

No. 16-5113
(D.C. Nos. 4:09-CV-00696-JHP-TLW &
4:06-CR-00131-JHP-1)
(N.D. Okla.)

ORDER

Before **TYMKOVICH**, Chief Judge, **LUCERO** and **MORITZ**, Circuit Judges.

Ethelwaldo Torres Rodriguez pled guilty to possession with the intent to distribute methamphetamine and was sentenced to 250 months in prison. This court affirmed his sentence on direct appeal, but the district court later reduced it to 188 months under 18 U.S.C. § 3582(c)(2), based on Sentencing Guidelines Amendment 782. He has filed one unsuccessful motion under 28 U.S.C. § 2255 to vacate, set aside, or correct his sentence. He now seeks authorization to file a second or successive § 2255 motion. We deny authorization.

We may authorize only those claims that rely 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 the movant 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); *see also id.* § 2244(b)(3)(C).

Mr. Rodriguez seeks to bring a claim that the district court erred in assessing the drug quantity attributable to him and in evaluating his guidelines range and thus violated his Fifth, Sixth, and Eighth Amendment rights. This claim does not rely on newly discovered evidence or a new rule of constitutional law. Because Mr. Rodriguez has failed to meet the requirements for authorization, 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.” *Id.* § 2244(b)(3)(E).

Entered for the Court



ELISABETH A. SHUMAKER, Clerk