

FILED

United States Court of Appeals  
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

February 1, 2016

Elisabeth A. Shumaker  
Clerk of Court

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In re: TOMMY JAMES C. RAVEN, III,

Movant.

No. 16-6008  
(D.C. No. 5:96-CV-1781-T)  
(W.D. Okla.)

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**ORDER**

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Before **KELLY, HARTZ, and GORSUCH**, Circuit Judges.

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Tommy James C. Raven, III, an Oklahoma prisoner appearing pro se, moves for authorization to file a second or successive 28 U.S.C. § 2254 habeas application. We deny authorization.

In 1989, Mr. Raven pleaded guilty to a charge of first degree murder. In 1996, he unsuccessfully pursued relief under § 2254 in the district court where he argued ineffective assistance of trial counsel. This court denied a certificate of appealability and dismissed the appeal.

Congress has placed strict limitations on second or successive § 2254 claims. Such claims cannot proceed in the district court without first being authorized by this court. *See* 28 U.S.C. § 2244(b)(3)(A). In his proposed district court filing, Mr. Raven seeks to present a previously unasserted habeas claim of ineffective assistance of appellate counsel in his appeal from the trial court's denial of his motion to withdraw his guilty plea.

Mr. Raven can present this “new” claim of ineffective assistance of appellate counsel only if he makes a prima facie showing that the claim relies on “a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable,” or new facts that “could not have been discovered previously through the exercise of due diligence” and that “if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found [him] guilty of the underlying offense.” *Id.* § 2244(b)(2)(A), (b)(2)(B)(i)-(ii).

In his motion for authorization, Mr. Raven states that the claim he wants to pursue is neither based on a new rule of constitutional law nor new facts. Accordingly, 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).

Entered for the Court



ELISABETH A. SHUMAKER, Clerk