FILED
United States Court of Appeals
Tenth Circuit

March 15, 2018

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

In re: NORMAN SHAW, JR.,

Movant.

No. 18-3037
(D.C. Nos. 2:05-CR-20073-CM-1 & 2:17-cv-02413-CM)
(D. Kan.)

ORDER

Before **HARTZ**, **MATHESON**, and **PHILLIPS**, Circuit Judges.

Norman Shaw, Jr., a federal prisoner appearing pro se, requests authorization to file a second or successive 28 U.S.C. § 2255 motion to vacate, set aside, or correct his sentence. For the reasons that follow, we deny authorization.

Mr. Shaw pleaded guilty in 2006 to entering a bank with the intent to rob it and to bank robbery, both in violation of 18 U.S.C. § 2113 (a). He was sentenced to 165 months' imprisonment. He did not appeal, but he subsequently filed a § 2255 motion. The district court denied the motion, and we denied a certificate of appealability.

We may grant authorization to file a second or successive § 2255 only if the movant makes a prima facie showing of (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. Shaw seeks to challenge the use of his 1990 Alaska robbery conviction as a predicate offense for the career-offender enhancement that was applied to his sentence under the Sentencing Guidelines. He argues that our decision in *United States v. O'Connor*, 874 F.3d 1147 (10th Cir. 2017), is newly discovered evidence that entitles him to authorization. But a court decision is not new evidence and *O'Connor* did not announce a new rule of constitutional law that has been made retroactive to cases on collateral review by the Supreme Court.[1] Because Mr. Shaw has failed to make a prima facie showing that he can satisfy either of the requirements in § 2255(h)(1), we deny authorization. *See* 28 U.S.C. § 2244(b)(3)(C). 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

[1] In *O'Connor*, we concluded that the defendant's prior conviction for Hobbs Act robbery under 18 U.S.C. § 1951(b)(1) did not qualify as a crime of violence for purposes of the career-offender enhancement in the Sentencing Guidelines. 874 F.3d at 1158.