FILED
United States Court of Appeals
Tenth Circuit

August 2, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

CARLON D. MCGINN,

Petitioner - Appellant,

v.

TOMMY WILLIAMS,

Respondent - Appellee.

No. 23-3062
(D.C. No. 5:23-CV-03095-JWL)
(D. Kan.)

ORDER DENYING CERTIFICATE OF APPEALABILITY*

Before **TYMKOVICH**, **MATHESON**, and **ROSSMAN**, Circuit Judges.

Carlon D. McGinn, a state prisoner proceeding pro se, seeks a certificate of appealability (COA) to appeal from the district court's order dismissing his unauthorized 28 U.S.C. § 2254 habeas petition for lack of jurisdiction. We deny a COA and dismiss this matter.

In 2003, Mr. McGinn pleaded guilty in Kansas state court to rape and aggravated criminal sodomy. He was sentenced to 554 months in prison, to be served consecutively to a prior three-year Colorado sentence for felony menacing. He did not appeal his convictions and sentence. In 2012, Mr. McGinn filed his first § 2254 habeas petition,

* This order is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

which the district court dismissed as time-barred. He has since sought to challenge his convictions and sentence through multiple state and federal court actions. He filed his second § 2254 petition underlying this matter in April 2023, raising two claims for relief challenging his sentence. The district court determined this petition was an unauthorized second or successive § 2254 petition and dismissed it for lack of jurisdiction. Mr. McGinn now seeks a COA to appeal from that dismissal.

To appeal the district court's order, Mr. McGinn must obtain a COA. *See* 28 U.S.C. § 2253(c)(1)(A); *Slack v. McDaniel*, 529 U.S. 473, 482 (2000). To obtain a COA, he must show both "that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack*, 529 U.S. at 484. We need not reach the constitutional component of this standard because it is apparent Mr. McGinn cannot meet his burden on the procedural one. *See id.* at 485.

A prisoner may not file a second or successive § 2254 petition unless he first obtains an order from the circuit court authorizing the district court to consider the petition. 28 U.S.C. § 2244(b)(3)(A). Absent such authorization, a district court lacks jurisdiction to address the merits of a second or successive § 2254 petition. *In re Cline*, 531 F.3d 1249, 1251 (10th Cir. 2008) (per curiam).

We liberally construe Mr. McGinn's pro se combined opening brief and application for a COA. *See Hall v. Scott*, 292 F.3d 1264, 1266 (10th Cir. 2002). In his COA application, Mr. McGinn does not dispute that he previously filed a § 2254 petition

and that he did not obtain authorization from this court to file another one. Nor does he address how the district court erred in its procedural ruling that his § 2254 petition was an unauthorized second or successive petition over which it lacked jurisdiction. Instead, he argues the merits of his underlying claims challenging his sentence.

Because Mr. McGinn has not shown that jurists of reason would debate whether the district court's procedural ruling was correct, we deny a COA and dismiss this matter.

Entered for the Court

CHRISTOPHER M. WOLPERT, Clerk