FILED
United States Court of Appeals
Tenth Circuit

August 30, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CLARENCE LEE DAVIS,

Defendant - Appellant.

No. 23-5063
(D.C. Nos. 4:04-CR-00085-CVE-2 &
4:23-CV-00190-CVE-JFJ)
(N.D. Okla.)

ORDER DENYING CERTIFICATE OF APPEALABILITY*

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

Clarence Lee Davis, proceeding pro se,[1] seeks a certificate of appealability (COA) to appeal from the district court's determination that his most recent 28 U.S.C. § 2255 motion is an unauthorized second or successive motion that it lacked jurisdiction to consider. *See* 28 U.S.C. § 2253(c)(1)(B). Mr. Davis has filed an application for a COA. We deny a COA and dismiss this appeal.

---

* This order is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel.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.

[1] Because Mr. Davis appears pro se, we liberally construe his filings. *Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 840 (10th Cir. 2005). But we do not make arguments for pro se litigants or otherwise advocate on their behalf. *Id.*

The district court found that Mr. Davis's motion was successive because he had previously filed numerous § 2255 motions. "A . . . successive motion must be certified as provided in [§] 2244 by a panel of the appropriate court of appeals . . . ." § 2255(h); *see also* 28 U.S.C. § 2244(b)(3)(A) ("Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application."). Mr. Davis had not obtained the required authorization from this court, and the district court therefore dismissed his application for lack of jurisdiction.

To obtain a COA, Mr. Davis must show "that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 478 (2000). No reasonable jurist would find it debatable whether the district court correctly ruled as a procedural matter that Mr. Davis's § 2255 motion was unauthorized and that it therefore lacked jurisdiction. *See In re Cline*, 531 F.3d 1249, 1251 (10th Cir. 2008) ("A district court does not have jurisdiction to address the merits of a second or successive § 2255 . . . claim until this court has granted the required authorization.").

Mr. Davis does not dispute that he filed a successive § 2255 motion. Instead, he argues that he needed no authorization because he is entitled to relief based on the Supreme Court's decision in *United States v. Taylor*, 142 S. Ct. 2015 (2022), and § 2255(f)(3). Section 2255(f)(3) provides that a § 2255 motion is considered timely if it is filed within one year of a Supreme Court decision that creates a newly recognizable right made retroactively applicable to cases on collateral review. Mr. Davis cites no

authority for his assertion that no authorization is required for a motion filed under § 2255(f)(3). Indeed, the language and structure of § 2255 make clear that the authorization requirement of section 2255(h) applies to any second or successive § 2255 motion, including those filed in reliance on subsection (f)(3).

We deny a COA and dismiss this matter.

Entered for the Court

CHRISTOPHER M. WOLPERT, Clerk