FILED
United States Court of Appeals
Tenth Circuit

June 20, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

MATTHEW WIGGINS,

Petitioner - Appellant,

v.

GONZALES, Deputy Warden; ATTORNEY GENERAL OF THE STATE OF NEW MEXICO,

Respondents - Appellees.

No. 23-2018
(D.C. No. 1:22-CV-00573-MIS-JFR)
(D. N.M.)

ORDER DENYING CERTIFICATE OF APPEALABILITY[*]

Before **HARTZ**, **EBEL**, and **BACHARACH**, Circuit Judges.

Matthew Wiggins seeks a certificate of appealability (COA) to challenge the district court's dismissal of his 28 U.S.C. § 2254 petition as an unauthorized second or successive petition. *See* 28 U.S.C. § 2253(c)(1)(A). We deny a COA and dismiss this matter.

Mr. Wiggins is a pro se New Mexico inmate. In 2009, he was convicted by a jury of kidnapping, false imprisonment, and criminal sexual penetration. The state courts affirmed his convictions and denied post-conviction relief.

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[*] This order is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel.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

In 2016, Mr. Wiggins filed a § 2254 petition, which the district court dismissed as untimely. *See Wiggins v. New Mexico*, No. 16-cv-168-JCH-KK (D.N.M. Oct. 6, 2016). Mr. Wiggins subsequently filed the § 2254 petition at issue here in 2022, challenging his same convictions. The district court determined the petition was an unauthorized second or successive § 2254 petition and dismissed it. *See* 28 U.S.C. § 2244(b). The district court also denied Mr. Wiggins' motion for reconsideration.[1] He now requests a COA to appeal the district court's dismissal.

To obtain a COA, Mr. Wiggins must show "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 v. McDaniel*, 529 U.S. 473, 484 (2000). If jurists of reason could not debate the district court's procedural ruling, there is no need to consider the constitutional question. *See id.* at 485.

Reasonable jurists could not debate the district court's procedural ruling. Mr. Wiggins previously filed a § 2254 petition. That petition was dismissed as untimely, rendering his underlying petition here second or successive. *See In re Rains*, 659 F.3d 1274, 1275 (10th Cir. 2011) ("The dismissal of [the] first habeas petition as time-barred was a decision on the merits, and any later habeas petition challenging the same conviction is second or successive . . . ."). Mr. Wiggins has not obtained this court's authorization to bring a second or successive § 2254 petition. Absent our authorization,

[1] Mr. Wiggins does not challenge the denial of his motion for reconsideration in his COA application, and we do not consider it.

the district court did not have jurisdiction to consider the petition. *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 . . . § 2254 claim until this court has granted the required authorization.").

Accordingly, we deny a COA and dismiss this matter.[2]

Entered for the Court

CHRISTOPHER M. WOLPERT, Clerk

[2] To the extent Mr. Wiggins suggests in passing that we should authorize him to file a second or successive § 2254 petition, we decline to do so in the context of resolving his application for a COA. To seek such authorization, he should complete and file on this court's form a request for authorization.