

**FILED**  
**United States Court of Appeals**  
**Tenth Circuit**

**UNITED STATES COURT OF APPEALS**  
**FOR THE TENTH CIRCUIT**

**June 9, 2023**

**Christopher M. Wolpert**  
**Clerk of Court**

LEON MAR'KEL WINSTON, JR.,

Petitioner - Appellant,

v.

CARRIE BRIDGES,

Respondent - Appellee.

No. 23-7012  
(D.C. No. 6:22-CV-00133-RAW-KEW)  
(E.D. Okla.)

**ORDER DENYING CERTIFICATE OF APPEALABILITY\***

Before **McHUGH, EID**, and **ROSSMAN**, Circuit Judges.

Leon Mar'kel Winston, Jr., an Oklahoma state prisoner proceeding pro se, seeks a certificate of appealability (COA) to appeal the district court's order dismissing his 28 U.S.C. § 2254 habeas petition as an unauthorized second or successive § 2254 petition and dismissing it for lack of jurisdiction. We deny a COA and dismiss this matter.

Mr. Winston was convicted of first-degree murder and sentenced to life imprisonment without the possibility of parole. The Oklahoma Court of Criminal Appeals affirmed his conviction and sentence. In 2017, Mr. Winston filed his first § 2254 petition in district court, asserting four claims for relief concerning the trial

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\* This order is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel.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

court's introduction of certain testimony and ineffective assistance of counsel. The district court dismissed the petition as untimely, and this court denied a COA.

On May 2, 2022, Mr. Winston filed a second § 2254 petition raising nine claims for relief, including that the state of Oklahoma lacked subject matter jurisdiction to prosecute him in light of the Supreme Court's decision in *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020). The government filed a motion to dismiss the petition for lack of jurisdiction because Mr. Winston did not receive authorization from this court to file a second or successive § 2254 petition. The district court granted the motion and dismissed the petition for lack of jurisdiction. Mr. Winston now seeks a COA to appeal from that dismissal.

To appeal the district court's dismissal order, Mr. Winston 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 question since it is apparent Mr. Winston cannot meet his burden of showing error in the district court's procedural ruling. *See id.* at 485.

A prisoner may not file a second or successive § 2254 petition without authorization from this court. 28 U.S.C. § 2244(b)(3)(A). And a district court lacks jurisdiction to consider the merits of a second or successive § 2254 petition absent authorization. *In re Cline*, 531 F.3d 1249, 1251 (10th Cir. 2008) (per curiam).

In his COA application in this court, Mr. Winston raises the same claims of error he presented to the district court in his successive § 2254 petition, including 1) the state lacked subject matter jurisdiction to prosecute him based on *McGirt*, 2) trial court error in admitting certain evidence, and 3) ineffective assistance of counsel. But these arguments go to the merits of his underlying claims; Mr. Winston does not 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. Mr. Winston does “assert[] that [n]one of the herein propositions o[f] error are barred from review under the principle of 22 O.S. § 1086, of the post-conviction act, nor the principle of res judicata.” COA Appl. at 10 (boldface omitted). But this conclusory assertion and citation to Oklahoma state law does not relieve Mr. Winston of his burden to meet § 2244(b)’s requirement that he obtain authorization to file a second or successive § 2254 petition. And he does not dispute that he has not obtained such authorization from this court.

Because Mr. Winston has not shown that jurists of reason would debate whether the district court’s procedural ruling was correct, we deny the application for COA and dismiss this matter. The motion to proceed on appeal without prepayment of costs or fees is granted.

Entered for the Court



CHRISTOPHER M. WOLPERT, Clerk