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**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

HADORI KARMEN WILLIAMS,

Defendant - Appellant.

No. 21-6154
(D.C. No. 5:15-CR-00174-R-1)
(W.D. Okla.)

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**ORDER DENYING CERTIFICATE OF APPEALABILITY***

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Before **HOLMES**, Chief Judge, **TYMKOVICH** and **ROSSMAN**, Circuit Judges.

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Hadori Karmen Williams, a federal prisoner proceeding pro se, seeks a certificate of appealability (COA) from the district court's denial of a motion he brought ostensibly under 18 U.S.C. § 3582(c)(1)(A), commonly known as a compassionate release motion. The district court construed the motion as an unauthorized second or successive 28 U.S.C. § 2255 motion and dismissed it for lack of jurisdiction. We conclude that no reasonable jurist could disagree with the district court's disposition, so we deny a COA and dismiss this matter.

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* This order is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel.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

## I. BACKGROUND & PROCEDURAL HISTORY

A federal grand jury in the Western District of Oklahoma indicted Mr. Williams in August 2015 on various charges related to illegal possession of drugs and firearms. He soon agreed to plead guilty to two of those charges, one of which was possessing a firearm despite his felon status.

At sentencing in June 2016, the district court found that the Armed Career Criminal Act (ACCA), 18 U.S.C. § 924(e), required a 15-year minimum sentence on Mr. Williams's felon-in-possession charge, given three previous Oklahoma convictions the district court deemed to be violent felonies or serious drug offenses. Specifically, Mr. Williams had two convictions for second-degree burglary and one conviction for possessing marijuana with intent to distribute. The district court therefore sentenced Mr. Williams to 15 years on the felon-in-possession charge. Consistent with his plea agreement, Mr. Williams did not appeal.

In October 2019, Mr. Williams filed a § 2255 motion claiming he received ineffective assistance of counsel because his attorney failed to argue that his second-degree burglary convictions were not violent felonies for ACCA purposes. The district court dismissed the motion as untimely, and this court denied a COA. *See United States v. Williams*, 799 F. App'x 657, 658 (10th Cir.), *cert. denied*, 140 S. Ct. 2840 (2020).

In July 2020, Mr. Williams filed a compassionate release motion arguing that his second-degree burglary convictions are not violent felonies for ACCA purposes. Referring to the district court's and this court's disposition of his § 2255 motion, he

admitted he had "procedurally defaulted" this argument. R. at 34. But he requested that the district court now grant him relief "on equity grounds." *Id.*

In September 2020, the district court denied the motion because Mr. Williams had failed to show he had first requested relief from the warden of his prison, as required by the compassionate release statute. *See* 18 U.S.C. § 3582(c)(1)(A). The district court did not examine whether the motion was, in substance, a second or successive § 2255 motion. Mr. Williams did not appeal.

Finally, in October 2021, Mr. Williams filed the motion currently at issue, which he again framed as a request for compassionate release. His arguments essentially mirrored those in the previous year's motion, but this new motion also made an explicit constitutional claim: "The failure of petitioner['s] attorney to challenge the classification of an ACCA predicate conviction[] violate[s] petitioner['s] . . . constitutional rights under the Sixth Amendment['s protection against] ineffective assistance of counsel . . . ." R. at 54. Later that same month, the district court construed this motion as a second or successive § 2255 motion and dismissed it for lack of jurisdiction because this court had not granted prior authorization. *See In re Cline*, 531 F.3d 1249, 1251 (10th Cir. 2008) (per curiam).

## II. ANALYSIS

Mr. Williams timely filed a notice of appeal and this court began processing the matter as a normal appeal. Thus, Mr. Williams filed an opening brief, not a COA motion. But this matter may not proceed without a COA, *see* 28 U.S.C. § 2253(c)(1)(B), and we may construe his notice of appeal and opening brief as a

request for a COA, *see United States v. Chang Hong*, 671 F.3d 1147, 1148 (10th Cir. 2011). We do so and proceed to analyze the COA question.

To merit a COA, Mr. Williams must "ma[ke] a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). This means he "must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). And he must make an extra showing in this circumstance because the district court denied his motion on procedural grounds, namely, lack of jurisdiction. So he must also show that "jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Id.*

We hold that the district court's disposition is not debatable. Although invoking the compassionate release statute, Mr. Williams's motion reasserted a claim of error in his conviction—indeed, the same claim he asserted in an earlier § 2255 motion.

> When a federal prisoner asserts a claim that, if true, would mean "that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack," § 2255(a), the prisoner is bringing a claim governed by § 2255.

*United States v. Wesley*, 60 F.4th 1277, 1288 (10th Cir. 2023). He cannot assert the same type of claim via compassionate release. *See id.* The district court therefore correctly determined that Mr. Williams's motion was an unauthorized second or successive § 2255 motion and correctly dismissed it for lack of jurisdiction. *See*

*Cline*, 531 F.3d at 1251. Jurists of reason could not disagree with the district court's procedural disposition, so we may not grant a COA. *See Slack*, 529 U.S. at 484.

## III. CONCLUSION

We deny a COA and dismiss this matter. We grant Mr. Williams's motion to proceed without prepayment of costs or fees. We also grant his motion to supplement with additional arguments.

Entered for the Court

CHRISTOPHER M. WOLPERT, Clerk