

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

October 9, 2026

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

PAUL DAVID MITCHELL, II,

Defendant - Appellant.

No. 26-5101
(D.C. Nos. 4:26-CV-00341-GKF-JFJ &
4:16-CR-00150-GKF)
(N.D. Okla.)

ORDER DENYING CERTIFICATE OF APPEALABILITY*

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

Paul David Mitchell, II, proceeding pro se,¹ seeks a certificate of appealability (COA) to appeal from the district court's order dismissing his 28 U.S.C. § 2255 motion for lack of jurisdiction because it was an unauthorized second or successive motion under that statute. *See* § 2255(h). We deny a COA.

I. Background

In 2017, Mr. Mitchell pled guilty to two counts of bank robbery, one count of carrying and brandishing a short-barreled shotgun during and in relation to a crime of

* This order is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel.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. Mitchell proceeds pro se, “we liberally construe his filings, but we will not act as his advocate.” *James v. Wadas*, 724 F.3d 1312, 1315 (10th Cir. 2013).

violence, and one count of interference with commerce by robbery. The district court sentenced him to 336 months in prison. Mr. Mitchell appealed, and this court dismissed his appeal based on the appeal waiver in his plea agreement. *United States v. Mitchell*, 696 F. App'x 927, 928 (10th Cir. 2017).

In 2024, Mr. Mitchell filed a § 2255 motion to vacate, set aside, or correct his sentence. The government moved to dismiss the § 2255 motion based on the collateral-attack waiver in his plea agreement. The district court granted the government's motion and dismissed the § 2255 motion. Mr. Mitchell sought a COA to appeal from the district court's decision, but this court denied his request. *United States v. Mitchell*, No. 25-5069, 2025 WL 3089807, *1 (10th Cir. Nov. 5, 2025).

In June of this year, Mr. Mitchell filed a second § 2255 motion to vacate, set aside, or correct his sentence. Because he had not received authorization from this court to file a second or successive § 2255 motion, the district court dismissed it for lack of jurisdiction. Mr. Mitchell now seeks a COA to appeal from that procedural ruling.

II. Discussion

To appeal the district court's dismissal of his § 2255 motion as second or successive and unauthorized, Mr. Mitchell must obtain a COA. *See United States v. Harper*, 545 F.3d 1230, 1233 (10th Cir. 2008). To obtain a COA where, as here, a district court has dismissed a filing on procedural grounds, the movant 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 v. McDaniel*,

529 U.S. 473, 484 (2000). We need not address the constitutional question if we conclude that reasonable jurists would not debate the district court’s resolution of the procedural one. *Id.* at 485.

A prisoner may not file a second or successive § 2255 motion unless he first obtains an order from the circuit court authorizing the district court to consider the motion. 28 U.S.C. § 2255(h); *id.* § 2244(b)(3)(A). Absent such authorization, a district court lacks jurisdiction to address the merits of a second or successive § 2255 motion. *In re Cline*, 531 F.3d 1249, 1251 (10th Cir. 2008) (per curiam).

In his COA application, Mr. Mitchell argues that the district court did not adequately address the substance of the sentencing claims presented in his latest § 2255 motion. But he has not provided any authority that would permit him to raise a claim of sentencing error in a second § 2255 motion without first receiving authorization from this court.

Mr. Mitchell also argues that the Supreme Court’s recent decision in *Hunter v. United States*, 608 U.S. 713 (2026), which involved the miscarriage-of-justice exception in plea agreements, warrants vacatur and remand for further proceedings. But he “acknowledges that [*Hunter*] does not itself abolish § 2255(h).” COA Appl. at 12.

We first note that although *Hunter* was not issued until after the district court ruled on the § 2255 motion, Mr. Mitchell filed a motion to reconsider with the district court after *Hunter* was issued, and he did not raise this argument with the district court. He has never presented this argument to the district court, and he has not explained why he could not do so.

Generally, we do not consider issues raised for the first time in a COA application. *See United States v. Moya*, 676 F.3d 1211, 1213 (10th Cir. 2012). But even if we did consider this argument, we agree with Mr. Mitchell that *Hunter* does not abolish § 2255(h)—in fact, it does not speak to the authorization requirement at all. *Hunter* therefore does not alter the applicability of the authorization requirement in § 2255(h) for second or successive § 2255 motions.

III. Conclusion

Mr. Mitchell cannot show that reasonable jurists would debate the district's procedural ruling dismissing his unauthorized second or successive § 2255 motion for lack of jurisdiction. Accordingly, we deny a COA and dismiss this matter.

Entered for the Court

Per Curiam