

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

October 2, 2026

Christopher M. Wolpert
Clerk of Court

JULIUS JEROME WALKER,

Petitioner - Appellant,

v.

DAVID LOUTHAN, Warden,

Respondent - Appellee.

In re: JULIUS JEROME WALKER,

Movant.

No. 26-7038
(D.C. No. 6:25-CV-00312-RAW-GLJ)
(E.D. Okla.)

No. 26-7059
(D.C. No. 6:25-CV-00312-RAW-GLJ)
(E.D. Okla.)

ORDER*

Before **McHUGH, MORITZ**, and **FEDERICO**, Circuit Judges.

Julius Jerome Walker, proceeding pro se, seeks a certificate of appealability (COA) to appeal from the district court's order dismissing his second § 2254 habeas petition for lack of jurisdiction as an unauthorized successive petition (No. 26-7038). He also seeks authorization to file his second § 2254 habeas petition (No. 26-7059). We deny both a COA and authorization.

* This order is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel.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

In 2010, Walker entered a blind plea of guilty to assault and battery with a dangerous weapon, child abuse, aggravated assault and battery, and domestic assault and battery by strangulation. The trial court sentenced Walker to life imprisonment on each count, with the sentences to run concurrently. The Oklahoma Court of Criminal Appeals (OCCA) agreed that Walker was subject to double punishment on one count, reversed on that count, and remanded with instructions to dismiss that count. The OCCA denied relief on the other counts.

In 2012, Walker filed his first § 2254 habeas petition, which the district court denied. We granted a COA on two issues but then affirmed the district court's decision. *Walker v. Patton*, 671 F. App'x 703, 703-04 (10th Cir. 2016).

In 2025, Walker initiated a new civil action by filing a pleading seeking leave to proceed under Federal Rule of Civil Procedure 60. The district court docketed it as a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. A magistrate judge entered an order explaining that while Walker described his handwritten filing as one seeking relief under Rule 60, the substance of his allegations sought relief from state custody under § 2254 by challenging the validity of his judgment and sentence. Because the court required a court-approved form for habeas petitions and Walker had not used that form, the order directed him to file an amended habeas petition using the court-approved form or risk dismissal of his action. Walker then filed an amended habeas petition.

Respondent moved to dismiss the amended habeas petition, arguing it was an unauthorized second or successive petition. The district court granted the motion and dismissed the amended habeas petition for lack of jurisdiction. In its order, the district court also explained that the “Petition styled ‘Leave to Proceed FRCP Rule 60 (A) (B) (1) (2) (3) (4) (D) (1-3)’ [Dkt. No. 1] is deemed moot in light of the filing of the Amended Petition.” R., vol. II at 630 (emphasis omitted).

Walker now seeks a COA to appeal from the district court’s dismissal order. He also seeks authorization to file a second or successive § 2254 habeas petition.

II. COA (No. 26-7038)

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.

“Habeas petitioners are generally entitled to one fair opportunity to litigate the merits of their postconviction claims in federal court.” *Rivers v. Guerrero*, 605 U.S. 443, 450 (2025) (internal quotation marks omitted). A prisoner may not file a second or successive § 2254 habeas petition unless he first obtains an order from the circuit court authorizing the district court to consider the motion. 28 U.S.C. § 2244(b)(3)(A). Absent

such authorization, a district court lacks jurisdiction to address the merits of a second or successive § 2254 habeas petition. *In re Cline*, 531 F.3d 1249, 1251 (10th Cir. 2008).

Walker asserts that the district court never gave reasons as to why it mooted his initial filing seeking relief under Rule 60. But the court did give a reason. It explained that the initial habeas petition, which Walker styled as “Leave to Proceed FRCP Rule 60 (A) (B) (1) (2) (3) (4) (D) (1-3),” was deemed moot by the filing of the amended habeas petition. *See R.*, vol. II at 630.

He also argues that the district court erred in treating his initial pleading as a § 2254 habeas petition. The court addressed that argument in its decision. It observed that Walker “appears to argue that his action is excluded from § 2244(b)(3)’s authorization requirement because his initial pleading was styled as a Rule 60(b) motion.” *Id.* at 628. But the court explained that “[a] Rule 60(b) motion . . . is not a proper initial pleading, and a habeas petitioner may not ‘evade the authorization requirements [of § 2244(b)(3)] by filing nominal Rule 60(b) motions.’” *Id.* (quoting *In re Cline*, 531 F.3d at 1253).

We have held that “a 60(b) motion is a second or successive [habeas] petition if it in substance or effect asserts or reasserts a federal basis for relief from the petitioner’s underlying conviction.” *Spitznas v. Boone*, 464 F.3d 1213, 1215-16 (10th Cir. 2006). And the Supreme Court recently reiterated that the requirements in § 2244 “apply to second-in-time habeas filings even if the filing is not styled as a § 2254 habeas application by the filer—so long as the document is a § 2254 petition in substance.” *Rivers*, 605 U.S. at 450-51. It explained: “For example, a self-styled ‘motion’ that ‘seeks

to add a new ground for relief ‘ or ‘attacks the federal court’s previous resolution of a claim on the merits’ can be construed as a second or successive petition and forced to face the gauntlet of § 2244(b), no matter how it is labeled.” *Id.* at 451 (quoting *Gonzalez v. Crosby*, 545 U.S. 524, 532 (2005)).

Walker’s initial filing sought to attack the federal court’s previous resolution of his habeas petition by challenging the magistrate judge’s recommendations regarding the disposition of his first habeas petition, *see, e.g.*, R., vol. I at 13-14, and asserted or reasserted claims for relief from his state conviction and sentence, *see, e.g., id.* at 19-20, 21. And Walker does not dispute that his amended habeas petition was a second or successive habeas petition that he filed without authorization from this court. Walker has therefore failed to show that reasonable jurists would debate the district court’s procedural rulings treating his initial filing as a habeas petition and dismissing his amended habeas petition as an unauthorized second or successive petition.

III. Authorization (No. 26-7059)

Walker also seeks authorization to file a second or successive § 2254 habeas petition. To receive authorization, he must make a *prima facie* showing that he can meet the requirements in § 2244(b)(2). *See* § 2244(b)(3)(C). To do so, he must show:

- (A) . . . that the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or
- (B)(i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and
- (ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and

convincing evidence that, but for constitutional error, no reasonable factfinder would have found [him] guilty of the underlying offense.

§ 2244(b)(2).

Walker filed his motion for authorization on this court's form and he checked boxes stating that his claims were based on newly discovered evidence and a new rule of law. But Walker has not identified any new evidence that would establish that no reasonable factfinder would have found him guilty of the underlying offenses to which he pled guilty as § 2244(b)(2)(B) requires. And he has also failed to show that his proposed new claims rely on a new rule of constitutional law that has been made retroactive to cases on collateral review by the Supreme Court that was previously unavailable as § 2244(b)(2)(A) requires. Accordingly, he has not met the standards for authorization under § 2244(b)(2).

IV. Conclusion

In No. 26-7038, we deny a COA and dismiss the matter. In No. 26-7059, we deny authorization. The denial of authorization “shall not be appealable and shall not be the subject of a petition for rehearing or for a writ of certiorari.” 28 U.S.C. § 2244(b)(3)(E). We also deny all other pending motions.

Entered for the Court

Per Curiam